

**Becoming a Father/Refusing Fatherhood: How
Paternal Responsibilities and Rights are Generated**

by

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Abstract

In this thesis I explore, both philosophically and empirically, the moral significance of genetic relatedness within the father/child relationship. In doing so I utilise a novel 'empirical bioethics' approach, in which I use specifically gathered qualitative data to inform the philosophical debate.

I present qualitative data, gathered over 12 focus groups, which explores men's normative constructions of fatherhood. The data suggests that fatherhood is essentially a social relationship, constructed within a narrative of responsibility, and that there is a distinction between being a 'father' and being a 'progenitor, both of which give rise to different kinds of responsibilities and rights.

I go on to construct a normative framework of paternal rights and responsibilities, which is informed by the qualitative data. I make a distinction between 'material' and 'paternal' responsibility, and in doing so I argue that a man can cause a child to exist, and be fiscally responsible for a child, without being a father. I argue that a man becomes a father (in a valuable sense), and earns paternal rights, when he accepts paternal responsibility and forms a paternal relationship with a child.

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Dedication

To Martin, my own father, for giving me a sense of perspective,

and;

To Louisa, my wife, who always makes me want to do better.

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General introduction

The aim of this thesis was twofold. I aimed to (i) document lay opinion about how the rights and responsibilities of fathers should be generated; and (ii) use this data to inform a normative philosophical framework for the acquisition of paternal rights and responsibilities. My approach was to use a relatively novel methodology, which might best be described as a kind of ‘empirical bioethics’. As I have argued elsewhere, in a forthcoming article (Ives 2008), the value of such an approach is to produce a more nuanced, more subtle, and more real ethical analysis, which is sensitive to the context for which it is intended. The purpose of gathering empirical data is not to describe beliefs and practices, but “to examine reasons, to uncover the normative assumptions and values that lie behind practice and belief” (Ives 2008), and use these assumptions and values to inform our ethical reasoning. Given this, my approach to qualitative analysis and to philosophising in this thesis is different to the norm, representing somewhat of an evolution in terms of methodology – a synthesis of the two disciplines. This methodological evolution is, I think, justified because my aims are different to that of a sociologist or a philosopher. I have not aimed to examine practice or relationships, and neither have I aimed to access some *a priori* notion of fatherhood. Rather, I sought to build a normative framework that will be of practical use to anyone in the unenviable position of having to decide who has the right, or who has a responsibility, to be a father to a child. The novelty in this method lies not in the way the empirical data is gathered, or even in the way it is analysed (although the analysis is very focussed on the normative questions), but rather the novelty

lies in the relation between the data and the philosophy, as will become clear as the thesis progresses.

It is important to note, also, that there are many approaches that could be taken to a moral examination of fatherhood, and the fact that I have chosen to focus on a rights and responsibility model rather than, say, an Aristotelian, Communitarian or Feminist model is simply reflective of my own research interests and the fact that the public debate in this area is primarily concerned with individual rights and familial responsibilities. A valid approach to a moral investigation of fatherhood would be to examine the 'virtuous father' or the father in the community, but that is someone else's project, and not mine.

To begin with I have initially examined fatherhood in the UK today, and I argue that there is some confusion about what fathers should be doing and how a man becomes a father. I then examine the attempts made by some philosophers to address these issues, and argue that the dialectic in this literature most often involves introspection, where accounts are rejected and/or accepted because they 'seem to fit with what seems to be right'. Rather than rejecting this as poor philosophy (because what other method is there?), I argue that a better approach may to reject the use of introspection and adopt the use of what might be called 'extraspection', wherein I access the introspections of others, find a common ground, and build a theory upon that common ground. The rest of the thesis describes how I have gone about doing this. For now, the overarching aim of this thesis could perhaps best be described as an attempt to come to a better understanding of what it takes for

a man to deserve parental responsibility and to whom parental responsibility ought to be given.

Reflexivity (1)

In presenting any piece of qualitative research it is appropriate to state, at the outset, one's own starting perspective on the topic under study, to be clear how this may impact upon one's analysis, and to outline the steps that will be taken to minimise researcher influence.

I am a white, 'middle class' male academic, whose only experience of fatherhood is having been fathered in a stable, heterosexual two parent family, within a Judaeo-Christian morality. Whilst I have been exposed to a wide variety of family forms and fathering styles socially, through friends and acquaintances, my first-hand experience is of having a father who was very much involved in raising me, who shared in the house-work, and who adopted an active, nurturing fathering style. This approach to fathering was most definitely the norm in my social grouping, and almost certainly has coloured my own perspective on fathering roles and ideology.

How this might have affected my approach to this project is uncertain, but it is important to acknowledge that it may have had an influence. It is certainly the case that I started this project with no particular agenda to push borne of my own experiences – and although I was brought up within a particular moral tradition I had long ago rejected it and was open to other perspectives. However, notwithstanding this, my somewhat 'limited' exposure to 'non-

traditional' family forms might have made me less willing to accept the (presumed) legitimacy of other approaches to fathering and to my analysis being 'blinkered'. The fact that I am a man is also significant, and it is possible that where issues of gender have arisen I may have been tempted to interpret the male story more sympathetically than the female, or *vice versa*.

By acknowledging this, and keeping it in mind throughout, I have tried to minimise the effect it might have had. By always trying to keep my mind open, allowing my analysis to be driven by the data, and by having these analyses checked by third parties, I have strived to ensure that my interpretations of the data are not coloured by any inclinations I might have to make the data fit my own perspective. As we shall see later, it is actually the case that data changed my perspective.

Section one - Fatherhood in Law and Society

Introduction

Before I begin proper, some definitions might be in order. I use the term 'parental responsibility' according to the definition set out in the *Children Act 1989*, referring to "all the rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to the child and his property" S3(1). It is important to set out early some terminological distinctions, and in doing so I will follow Bainham in setting out three distinct terms to refer to various aspects of fatherhood (Bainham 1999). Bainham argues that in order to achieve greater clarity when asking 'who is the parent' we should employ three different terms to distinguish between three types of parenthood, which are often used interchangeably and inconsistently in both law and common discourse. Firstly, a man can be a 'parent' insofar as he is the genetic progenitor of the child.¹ Secondly a man can be a 'parent' in the legal sense – his name is entered onto the birth register and he is treated by law as the child's father. This status brings with it certain rights and responsibilities, including "financial liability for child support...the right to object to a change of the child's surname and to removal of the child from the jurisdiction...a presumption of contact when the child is in care and an automatic right to go to the court" (Bainham 1999) pp33-4. None of these rights are inviolable, but a court order is required to prevent them from being exercised. Thirdly, a man can be a parent in the sense that he has parental responsibility, defined

¹ Being a genetic parent, Bainham argues, should be distinguished from being a biological parent. A woman who uses donated eggs can be biological parent insofar as she is the gestational mother, but not the genetic parent. Because we are talking solely about men here, we do not need to make the distinction, because the only way for a man to be 'biologically' related to a child is by virtue of being genetically related.

above, which means that he is legally empowered to make decisions concerning the day-to-day care and upbringing of the child, including decisions about schooling, medical treatment, residency etc. In order to better respect these different ways one can be a parent Bainham suggests that we use the term 'parentage' to refer to the status of being a genetic parent; 'parenthood' to refer to the status of being a legal parent; and 'parental responsibility' to refer to the status of being empowered to make decisions concerning day to day care. I should note here that I will employ Bainham's terminology in order to bring clarity to the ensuing discussion, and not because I endorse his motivation for doing so, which is to retain a legal distinction between these three kinds of parent because they "serve a vital purpose in that they give expression to the continuing importance of the genetic link" p34. It is particularly important to bear this in mind because one of the central questions this thesis will address is whether this kind of distinction is useful, whether it is justifiable, and whether or not parentage ought to be sufficient ground for a man having parental responsibility². For me to assume the 'continuing importance of the genetic connection' could well be to beg the question I am asking, which is essentially: 'should a genetic connection (parentage) to a child be necessary or sufficient to confer parental responsibility on a man?', and its obverse question; 'should a social connection to a child be necessary or sufficient to confer parental responsibility on a man?'

² For a good discussion of the legal implications of the distinction between parenthood and parental responsibility see (Eekelaar 2001). Eekelaar, and Lowe (Lowe 1982;Lowe 1997) have suggested, contra Bainham, that it might be best not to maintain the distinction, and that the concepts of 'parenthood' and parental responsibility should be subsumed.

The two questions identified above are motivated by a variety of concerns, and the purpose of the first section of this thesis is to make these explicit. I begin in Chapter One by outlining the current legal state of fatherhood in the UK and suggesting that the law is sending out mixed messages concerning the significance of the genetic connection to fatherhood; but that, overall, fatherhood is becoming 'geneticised' in law. I shall then outline in Chapter Two what I call the 'ideology of fatherhood', and by looking at the shifting cultural and social conceptions and expectations of fatherhood I shall argue that fatherhood as a social ideal is moving towards a non-genetic model where successful fathering depends on role fulfilment and social interaction. In the concluding chapter of this section I shall argue that there is a tension between legal and socio-cultural constructions of fatherhood, and that this tension has created a climate in which fatherhood is not only a contested concept, but in which men can be uncertain of what is expected of them as fathers, and in which it is unclear what it means, or what it takes, to be a father.

Chapter 1 - Fatherhood and the law

The law with regards to fatherhood has been continually developing over the last few decades, and this development has been closely tied in with the emergence and growing emphasis on the 'welfare principle'. First established in the *Children Act 1989*, this principle places the rights and interests of the individual child above that of the parents and the family unit (Herring 1999; Smart 1995). Lord Justice Wall has outlined clearly the judicial implications of this:

The welfare of the child is the paramount consideration. There is a welfare checklist in section 1 of the Children Act. But the judge essentially in every case (and every case is different) has to assess the parties, look at the situation carefully, analyse the facts and make a decision which he or she believes to be in the best interests of the child. (*W (A Child)* [2005] EWCA Civ 1276, per Wall LJ, 4)

Despite the many changes that have occurred in the legislation concerning parental rights and responsibilities since that Act, this one principle has remained intact, and has, on paper at least, been the primary concern of policy and of the courts³. The changes in law have, arguably, occurred as a result of an attempt to ensure that the welfare of children is promoted in a rapidly changing society.

³ See also: *Re G (children)* [2006] UKHL 43; *Re R (Contact: HFEA (initial hearing), RE D (Contact: Human Fertilisation and Embryology Act 1990 [2001] 1 FLR 972; Re R (A Child) (IVF: Paternity of Child) [2003] EWCA 182; Re D (A Child Appearing by Her Guardian ad Litem (Respondent) [2005] UKHL 33; Henshaw (2006); DWP (2006); and The Law Commission 1988 - Review of Child Law, Guardianship and Custody. Law Com. No. 172, 3.22.*

It has become apparent that accompanying the legal developments has been a growing emphasis on the genetic relationship between a father and child and, to a large extent, legislation via the *Child Support Act 1991* and the *Adoption and Children Act 2002* has defined fatherhood in terms of the genetic relationship, placing responsibility for a child squarely on the shoulders of the genetic parents. This has recently been emphasised by a report commissioned by the Department of Work and Pensions on child support (Henshaw 2006), which states in its executive summary that “[i]mproving the welfare of children should be the paramount concern of child support” and that “first and foremost, child support is the responsibility of the parents involved” p4. Although no attempt is made to define what is meant by ‘parent’, the implication is that ‘parent’ means ‘genetic parent’ (as we shall see later when we look at child support), and thus quite clearly tells us that fiscal responsibility for a child is tied to being genetically responsible for its existence. Running contrary to this trend is the *Human Fertilisation and Embryology Act 1990* which severs completely genetic relatedness from fatherhood and fiscal responsibility. This Act gives no paternal status to sperm donors, and gives full parental responsibility to the non-genetically related treatment partner of the mother. However, recent legislation lifting gamete donor anonymity has reinforced the perceived significance of the genetic connection and the right of the child to ‘genetic truth’.

Married and unmarried 'fathers'

Prior to the *Family Law Reform Act 1987*, only married men automatically assumed parental responsibility for 'their children', giving them both rights and responsibilities as fathers. Parentage, parenthood and parental responsibility were not conferred separately, but were generally conflated under the general notion of 'being a parent'. Thus, children born within wedlock were presumed legitimate (to be children of the marriage) and had all the social advantages of being legitimate (rights of inheritance, for example) and of having two parents. This presumption of legitimacy was so strong that any third party was barred from bringing an action that challenged the married man's paternity. Assuming that adultery did take place before 1987, and that pregnancies did result, the consequences of this were that many children were brought up by men who were not their biological father, and many biological fathers were prevented from having a relationship with their progeny. Whilst Hill thinks these measures may seem a little Draconian today, he has also noted that they were well intentioned, their motivation being the protection of the family unit and the avoidance of the legal disadvantages and social stigma associated with illegitimacy (Hill 1991). Conversely, the unmarried man had no parental responsibility, and could only acquire legal parenthood if the child's mother invited him to enter his name on the birth register. He would, otherwise, still have had parentage, but this conferred no legal status, and the child was considered legally 'fatherless'. Traditionally, then, a man's status as a parent was defined in terms of his relationship with the child's mother, and more specifically, according to Pickford "[m]arriage has...been a key element

in our understanding of what it means to be a father” (Pickford 1999) p145. This emphasis on marriage and legitimacy was undoubtedly motivated by a wish to protect the family unit, and it is clear that maintaining and protecting the family unit was valued over and above the ‘genetic truth’.

The increase in births outside of marriage in the latter half of the 20th century led to the Law Commission⁴ recommending legislation aimed at removing the stigma from illegitimate children. Five years later the *Family Law Reform Act 1987* followed suit, allowing unmarried fathers to automatically acquire parenthood and thereby ensuring that children born outside of wedlock were not automatically fatherless (Pickford 1999). Whereas previously the unmarried man with parentage could only be entered onto the birth register if the mother invited him to do so (and if he agreed to do so), the new Act allowed the unmarried man with parentage – with the aid of a court order – to have his name placed on the birth register without the consent of the mother. This conferred parenthood, but did not confer parental responsibility. The Act did, however, give the unmarried man with parenthood the automatic right to seek a parental responsibility order, the granting of which placed him in the same position legally as the married father. The result of this was to give unmarried men close to the same basic rights as married men, and this was based upon the view that the fact of being a genetic father is more important than the fact of being married. As Cronin notes:

⁴ The Law Commission 1982 - Illegitimacy. Law Com. No. 118.

by granting the unmarried biological father almost the same rights as the married father, the Family Reform Act emphasised, for the first time this century, the importance of the genetic link between father and child (Cronin 1997) p35

A further development was the *Adoption and Children Act 2002* (S.111, 2a), which gives unmarried fathers joint parental responsibility upon being recognised legally as a child's father (acquiring parenthood). This, of course, will happen automatically if the child's mother is willing for the man with parentage to be registered on the birth certificate, but the provisions of the *Family Law Reform Act 1987* still allow him to seek a court order to have his name entered onto the birth register⁵, which will be granted upon a positive DNA test (providing doing so is consistent with the welfare principle). Once he is entered onto the birth register as the child's 'father' (attaining parenthood), according to the provisions of the *Adoption and Children Act 2002* he automatically acquires parental responsibility.

We can see here a shift in the legal status of fathers that is increasingly emphasising the importance of individual genetic ties over and above the family unit. Whereas at one time the law sought to prevent any third party from 'invading' the family for any reason, it now considers a genetic connection with child sufficient reason to do so, which is almost a 180 degree turn. By allowing unmarried men to have their name entered onto the birth certificate against the wishes of the mother, the mother, and marriage, has been displaced as the gatekeeper to paternity, and in her stead is a DNA test.

⁵ See Re(1) H (2) A (Children) [2002] EWCA Civ 383.

This is, perhaps, putting it a little strongly, and in practice it is not so simple. In a sense mothers are still very much the gatekeepers to paternity, because a woman is under no obligation to disclose that she suspects a man of being the genetic father of her child. If she does not, in the first place, disclose this information, then no DNA test would ever be needed. The reality is that a DNA test only really becomes the gatekeeper if the mother has decided to post it there. If a man suspects he is the genetic father of a child he might seek a court injunction to enforce a paternity test, but, again, this is only ever granted if it is considered to be in the child's best interests – in which case the court takes the place of the mother as the gatekeeper. The DNA test, then, can be seen as a final determiner, but one that is only appealed to if the mother (or the court) decides to do so.

Child support

Richards has also observed this shift in the legal status of the father, and suggests that whilst fatherhood was once something to be grasped, or a status to be achieved, it now seems to be becoming, at least in law, something that is determined by DNA (Richards 2003). He notes that under the *Child Support Act 1991* “a man is liable for support of any child with whom he shares DNA sequences” p304. The significance of the genetic connection to the *Child Support Act 1991* becomes more obvious when we consider that a man's financial obligations towards a child are terminated if it can be proven that he is not the genetic father. Parenthood can be challenged if a DNA test can prove that a man does not have parentage, and under the terms of the

Act a man who does not have parenthood is not under a duty to maintain a child financially. Recent cases in the UK and Australia have resulted in men successfully suing, and receiving financial compensation, for having supported (or being made to support) children who were not their genetic offspring (BBC news 1999;BBC news 2001;McVeigh 2007;Munrow 2004). Such cases are increasingly being referred to as 'paternity fraud', where a man is considered to have been fraudulently persuaded into being a father (Draper 2007b).

It is interesting to note, however, that a man has been financially liable for his progeny since the introduction of the *1991 Act*, and yet it was only in 2002, 11 years later, that being on the birth register (having parenthood) has been sufficient to give a man parental responsibility. This suggests a somewhat inconsistent attitude to the significance of the genetic connection in the intervening years, wherein a man was liable for maintenance on the grounds of being genetically related to a child, but where the genetic connection was not considered sufficient to give a man any paternal rights. It was still the relationship with the child's mother, predominately marriage, which determined a man's parental responsibility. This somewhat idiosyncratic approach to fatherhood was likely motivated by rising concerns about the growing costs of lone parents to the state (Williams 1998), and this, as Donovan notes, 'dovetailed nicely' with one of the driving ideologies behind it, that being the protection of the traditional family (Donovan 2000). The 1991 Act shifted the focus of fatherhood from paternal rights to parental responsibilities, characterised by Collier as a shift in policy discourse from

'father rights' to 'father absence' (Collier 1995), and whilst the aim was to make absent fathers fulfil their financial responsibilities towards their children, "...in practice it also [served] to underline the significance of biological fatherhood..." (Donovan 2000) p151.

Whilst the *Child Support Act 1991* may have been motivated by a desire to protect the family and traditional paternal roles (with obvious benefits to the state's coffers), in practice it also served to drive a symbolic wedge through the concept of fatherhood, separating the social act of fathering from the biological act of procreation, explicitly linking biological fatherhood with financial obligations and shifting the legal conception of fatherhood from a voluntary familial obligation to a mandatory individual burden that is genetically derived. As such, one further consequence of the 1991 Act is that it has instilled and perpetuated the notion that a father's responsibilities towards his children are met if he provides for them financially. The wording of the 1991 Act supports this reading, stating that a parent's duty to maintain will be met "by making periodical payments of maintenance with respect to the child of such amount, and at such intervals, as may be determined in accordance with the provisions of this Act." S.1, 2. Thus, even though this was almost certainly not its aim, the act seems to have defined fatherhood in terms of biology, and fathering in terms of financial maintenance.

Recent criticisms of the Child Support Agency (CSA) (which was created to enforce the 1991 Act) led to the Department for Work and Pensions (DWP) commissioning a report examining the role and purpose of child support. The

report, conducted by Sir David Henshaw, stated (as we have already seen), that the purpose of child support is to look after the welfare of the child, and that the responsibility for child support rests with the parents (which is taken to mean genetic parents). In his ministerial forward to the governmental response to Henshaw's report (Department for Work and Pensions 2006), John Hutton went even further, stating that "parents, whether they live together or not, have a clear moral as well as legal responsibility to maintain their children. Relationships end. Responsibilities do not" p1. Hutton's statement suggests quite strongly that the purpose of the legalisation, and of any agency set up to enforce it, is to support and enforce a moral responsibility on the part of genetic parents to maintain their children. Further evidence of the zeal with which ministers are seeking to ensure that absent fathers discharge their 'legal and moral' duty, as reported in the Telegraph (Jones 2006a), is Hutton's suggestion that men who refuse to pay may be 'named and shamed'. This implies a strong belief that men will find being identified as 'a father who refuses to pay' shameful; and the prospect of this 'naming and shaming' working as a deterrent to errant fathers assumes a general public condemnation of such behaviour. A study conducted for the DWP suggests that this may well be the case. In this study, conducted across five focus groups, Atkinson and colleagues found that parents supported the idea that, regardless of home circumstances or intention, people who become genetic parents have a responsibility to financially support their offspring (Atkinson, McKay, & Dominy 2006). This study, though not large or representative, suggests that public opinion may be in line with that of the government, and is a clear endorsement of the ministerial claim

that progenitors have a fiscal responsibility. Here, then, it seems that law, policy and public opinion may converge.

When parents separate

Once a man has parental responsibility, if he separates from the child's mother he will retain his parental responsibility and will be treated on a par with the mother in any custody disputes. In theory the court works on the presumption that, providing there is no evidence to the contrary, a child's interests will be best served by having regular and sustained contact with both parents (*Family Law Act 1996*, 11.4). Collier has argued that the *Family Law Act 1996*, by treating parenthood as an essentially ungendered practice, has supported an engineered re-construction of fatherhood, which has actively sought to promote joint parenting post-separation/divorce. The provisions of the Act, he claims, "envisage a sense of reciprocal obligation, duty and familial responsibility which is made manifest in the commitment to legal marriage and, it is assumed, shared parenting" (Collier 1999) p45. Smart concurs, arguing that in the 1996 Act (and the *Children Act 1989* and *Child Support Act 1991*) there is an ideological commitment to 'keeping fathers in touch' – even when, as Collier notes, this may be against the wishes of the mother⁶ (Collier 1999; Smart 1997). If it is the case that legislation is actively seeking to promote post-separation/divorce fathering, it is not clear that it is having the desired effect. It has been argued that the court's assumption that women make better lone parents than men, coupled with the overriding

⁶ See *Re R (A Minor) (Contact)* [1993] 2 FLR 762.

concern for the welfare of the child, has led to the courts favouring mothers in custody disputes. Lowe writes:

Over the century fathers' rights over their legitimate children have substantially declined. Whereas formally they stood supreme both in and outside court, today, they are in a more or less equal position with mothers outside the court, and when proceedings are brought their interests (as well as the mothers') take second place to the child's. However...the application of the 'welfare principle' in court proceedings seems to favour mothers more than fathers, at least where young children are concerned. (Lowe 1982) p40

Even after the 1991 and 1996 Acts, this is still a criticism levelled at the Family Court, and is believed by some to represent an unfair bias in favour of mothers⁷. However, arguably, if there were a bias towards mothers in the courts then the charitable explanation would be that it is caused by an assumption (whether erroneous or not) that the best interests of the child lie with the mother (Herring 1999), rather than a concerted attempt to curb the rights of fathers. Even if we ignore the possibility of actual bias, it still often turns out to be the case that a father who retains parental responsibility but not custody is a father in theory but not in practice. The realities of the situation often result in absent fathers being unable to exercise their parental responsibility and feeling dissatisfied at what they perceive to be an unfair

⁷ For example, much of the rhetoric surrounding the father's rights movement in the UK has focussed on alleged prejudice in the family court towards fathers.

court system that is loaded against them (Bertoia & Drakich 1995;Dudley 1996;Lowe 1982). This feeling that absent fathers are unable to exercise their parental responsibility has led to the growth of the father's rights movement in the UK, with groups such as *Fathers 4 Justice* and *Families Need Fathers* campaigning for the rights of separated fathers. Knijn suggests that the aim of such 'father's organisations' is to secure the 'traditional rights' of fathers, stating that they

“demand...fathers are granted the custody of their children following divorce, they claim the right to introduce their children into their new families, they oppose the obligation to pay alimony, and they want a say in decisions concerning abortion” (Knijn 1995) p7.

However, this may be rather a sweeping generalisation, and in Britain the main focus of the fathers movement has been to highlight their belief that the courts do not do enough to ensure that absent 'fathers' are allowed to be fathers. Of course, there is another side to the story. An article in *The Guardian* (Aitkenhead 2006) reported harrowing stories of children being 'forced to see their abusive fathers', and these stories represent a world apart from the images of wronged dads portrayed by fathers organisations. Directly contesting the claims made by such organisations, Aitkenhead argues that the Family Court often enforces contact orders and finds in favour of fathers despite clear evidence that doing so is harmful to the child. If this were the case, then it seems that the courts are founding contact judgements on the rights of fathers to have relationship with their genetic progeny rather than on

the welfare principle. The secrecy in which the workings of the Family Court is still enshrined make it impossible to verify these claims, and equally difficult to ascertain trends in custody decisions. Thus, ratifying the empirical claims of either side of this debate is beyond the scope of this project, and although I certainly hope that this work will be done, it will not be done here. It is also clearly not the case that every man would be a perfect father if only he were given the opportunity. It may be true that some men would, but it is equally true that a great many men have no interest in being fathers or in financially supporting the offspring that they have. The most recent statistics from the Child Support Agency show that only 61% of maintenance orders have positive outcomes, which means that just under 300,000 men in the UK are not paying the maintenance they are required to (Department for Work and Pensions 2007). The fact that the CSA exists at all is evidence that many men would be happy to cut and run, and would willingly abandon the children they sire.

What we can take from this discussion is the idea that, despite the existence of many men who are quite happy to have nothing to do with their offspring, many men who pay child support feel that they are being prevented from being fathers, even though they are fulfilling all the responsibilities of the father as defined in law, and feel frustrated at not being able to fulfil what they consider to be their 'duties' as fathers⁸; and this suggests a dichotomy between legal and social conceptions of fathering.

⁸ Mathew O'Connor, founder of Fathers 4 Justice, claimed on the organisation's website, in 2005, that many men were driven by a sense of duty and obligation towards their children. Since the original movement was disbanded and reformed, this web content has been removed. On the original 2005 website, this claim was made under the heading 'our pledge'.

Assisted Reproductive Technologies

Whilst the developments outlined above clearly show a trend towards the legal geneticisation of fatherhood, the obvious exception to this trend is where conception is a result of using Assisted Reproductive Technologies (ART), wherein any man who undergoes treatment with his female partner in a Human Fertilisation and Embryology Authority (HFEA) licensed clinic acquires both parenthood and parental responsibility for any resulting child.

Jamieson notes that the term 'parent' is subject to 'special definitions' in the *Human Fertilisation and Embryology Act 1990* (Jamieson 1995). He is half right, insofar as only the term 'father' is subject to any special definition that differs from its normal legal usage. When a child is born as a result of sperm donation, the consenting male partner of the woman having treatment, whether married or not, is regarded as the father and automatically assumes parental responsibility (S.23, 1-9). This differs from the standard usage in one significant way; even though the (male) partner of the mother is known *not* to be the child's genetic father he is still entered onto the birth certificate. It seems odd, then, that around the same time as legalisation was being brought in that 'geneticised' fatherhood where conception was natural, legislation for assisted conception did not follow suit and, in fact, went in the opposite direction.

Certainly, this was motivated by concerns raised by the Warnock committee that the family unit needed protecting from the 'invasion of a third party' (the

gamete donor). The Warnock Report⁹ recommended that gamete donation should be completely anonymous and that donors should have no rights or responsibilities towards their progeny. The report also expressed concerns about the stigma of male infertility and considered it unlikely that openness about sperm donation would be achieved until that stigma was removed. Treating the partner of the mother as the father in all respects sought to protect him from the stigma associated with male infertility, and sought to 'normalise' the family.

The treatment of paternity, then, under the *Human Fertilisation and Embryology Act 1990*, severs completely the genetic link between 'father' and child. The genetic progenitor, even when known, is not afforded any paternal status by the law, and the consenting male partner of the mother is afforded both parenthood and parental responsibility. The Act thus sought to protect and maintain the family unit, placing social/familial concerns over genetic ties, and re-locating fatherhood in terms of voluntary familial obligation, which is where it had always traditionally resided.

The HFEA, however, came under increasing pressure to remove donor anonymity. This was undoubtedly a result of a combination of high profile court cases (see below) and increasing public awareness of the idiosyncrasies between the facts that adopted children had the right to identifying information about their genetic parents whereas donor conceived children did not. This pressure culminated in an amendment being made to the 1990 Act, effected in April 2005, allowing all donor conceived children to

⁹ Report of the Committee of Enquiry into Human Fertilisation and Embryology 1984.

access identifying information about their ‘donor fathers’, upon request, at the age of eighteen. Whilst the legislation places no obligations on donors towards their offspring, and gives them no rights against them (and vice-versa), it does seem to be giving the very clear message that it is important to know one’s genetic parents. As Draper has pointed out, when the law acknowledged a positive right to know one’s genetic origins it was tantamount to acknowledging that it is important to know one’s genetic origins; so vitally important, in fact, that we have enshrined it as a positive right (Draper 2004). Richards notes that this move was driven by a growing belief that a child needs to know its genetic origins, and that the Government’s decision to bring in this legislation was heavily influenced by concerns over human rights (Richards 2006). One key case seems to be a test case taken to court by the civil rights organisation *Liberty* on behalf of Adam and Jo Rose¹⁰. They were successful in claiming that the *HFE Act 1990* was in breach of Article 8 of the *Human Rights Act 1998*. The court held that the state was under a positive obligation to release information that identified their donor father to them. Mason and Laurie note that this ruling found that the right to ‘respect for private and family life’ (article 8) includes the right of everybody “to establish details of their identity as individual human beings and that this includes their origins and the opportunity to understand them” (Mason & Laurie 2006) p86. This ruling, and the subsequent amendment made to the *HFE Act 1990*, focuses on the child’s right to genetic knowledge, rather than on father’s rights and responsibilities (in fact, these are not affected); but in doing this the door has been opened to that third party invasion that the Warnock committee so

¹⁰ R (on the application of Rose) v Secretary of State for Health [2002] 2 FLR 962.

feared. A man cannot force his way through that door, but it has certainly been unlocked from the inside. It is, however, important to note that there has been no accompanying legislation that obliges parents to tell donor conceived offspring about their origins. Given this, and given that many parents are unlikely to disclose this information (Gottlieb, Lalos, & Lindblad 2000; Lycett et al. 2005; McGee, Brakman, & Gurmankin 2001) a child's ability to exercise this right is entirely contingent upon the parent's willingness to disclose the facts of their conception.

The significance of genetic fatherhood, and the 'right to genetic truth', has been further illustrated elsewhere. In *Re R* (2001)¹¹, *Re R* (2003)¹² and *Re D* (2005)^{13,14} Ms D and Mr B sought treatment together using donor sperm. The couple split, but without notifying the clinic Ms D continued with the treatment with a new partner (Mr S), relying on the consent given by Mr B. When Ms D gave birth, Mr B sought parental responsibility and contact with the child. Mr B's initial application for a parental responsibility order was adjourned by the court, which also said that it was likely to be issued in the future if Mr B continued to demonstrate a commitment to the child over the next few years. This was followed by two appeals. The first of which, brought about by Mr B, contested the extent of contact given to him, and was rejected by the Court of Appeal. Despite rejecting the appeal, the Court praised the first judgement for taking the view that the child's biological parentage could be 'relevant to the

¹¹ B's appeal.

¹² D's appeal.

¹³ D's appeal against the ruling by the Court of Appeal.

¹⁴ *Re R* (Contact: HFEA (initial hearing), *Re D* (Contact: Human Fertilisation and Embryology Act 1990 [2001] 1 FLR 972; *Re R* (A Child) (IVF: Paternity of Child) [2003] EWCA 182; *Re D* (A Child Appearing by Her Guardian ad Litem (Respondent) [2005] UKHL 33.

welfare of the child', and maintained the ruling that it would be beneficial for the child to have contact with the man 'deemed to be the child's father' (Mr B). The reasons given were that the court "had more confidence that the father [Mr B] would be able to deal in due course with the delicate issue of the circumstances of [the child's] conception and birth than the mother" (Re R 2001, per Hale LJ, 38). The second appeal, brought by Ms D, challenged the previous judgements that Mr B was the child's father, and was upheld. The Court found that Mr B could not be considered the legal father of the child. The child would, then, be legally fatherless, but this ruling did not affect the previous Court's decision to allow contact to Mr B. Sheldon remarks these rulings demonstrate that:

...the weight attached to genetic fathers and the growing currency of the 'right to genetic truth'...does not play out in a straightforward way. While B does not share a genetic link with [the child], he can claim some limited rights because of the role he can play in explaining her genetic origins. (Sheldon 2005) p543

Further to this, Sheldon makes another very interesting point. None of the courts appeared concerned that introducing Mr B, a third party, into the child's life was likely to cause problems (something which is, incidentally, in direct contrast to the findings of the Warnock committee). She claims that the judges decision to "foster contact between Mr B and the child suggests that the existence of more than one party with some claim to be considered a child's father is not necessarily a bad thing" (Sheldon 2005) p544. From this, and other examples, she forms her thesis that the legal conception of

fatherhood has become fragmented, allowing for the possibility that more than one man can have a legitimate claim to be a father of the same child. She claims the courts are recognising that it is not a bad thing, and is potentially a very positive thing, for a child to have more than just one 'father'.

This 'fragmentation' thesis is supported by another case, brought against the Leeds Teaching Hospitals NHS Trust¹⁵. Mr and Mrs A attended a fertility clinic for treatment at the same time as Mr and Mrs B. A mistake occurred in the lab, and Mr B's sperm was accidentally used to fertilise Mrs A's eggs, which were then successfully implanted back into Mrs A. The mistake became obvious when Mrs A gave birth to mixed race twins, and their parentage was traced back to Mr B. Both couples agreed that the twins should remain in the care of Mr and Mrs A, but a battle ensued over who was to be the twin's legal father (who would acquire parenthood). The court found that Mr A could not be considered the legal father under section 28(2) of the *Human Fertilisation and Embryology Act 1990* because he had not consented to treatment with the use of any sperm other than his own. It was also deemed that section 28(3) did not apply as the notion of 'treatment together' had been undermined by his lack of consent to the treatment that actually took place. Given that Mr A could not be considered the twin's father under the Act, Mr B was awarded legal paternity. However, recognising the role that Mr A had played in bringing the twins up so far, he was awarded parental responsibility. The presiding judge was clearly prepared to recognise that two men could play a 'father' role in the twin's life, one of whom is the genetic

¹⁵ The Leeds Teaching Hospitals NHS Trust vs. Mr A and others [2003] EWHC 259 (QB)

father and one of whom is the social father, and Sheldon sees this as further evidence of the fragmentation of the legal conception of fatherhood.

Summary

We can see then, that although there is a general trend towards the geneticisation of fatherhood in law, it is not necessarily motivated by the significance of the genetic relation to fatherhood *per se*, but rather by a recognition of the importance to a child of knowing the genetic truth. This ideal is, however, still in tension with the desire to protect the traditional family, and this has given rise to different areas of law and policy constructing fatherhood in different ways for a variety of different reasons. The table below (fig.1) summarises the cases and statutes that have been discussed above, and their effect on the construction of fatherhood in law. Looking at figure one, we can see a clear trend towards constructing fatherhood as a biological relationship defined by financial obligation, followed by an emphasis on the need of the child to know its biological parentage.

Legislation/Case	Effect on fatherhood
Family Law Reform Act 1987	Displaced mothers and the family as the gatekeepers to paternity. Emphasised the biological father's right to establish himself as a parent, putting individual genetic ties over the family unit
The Children Act 1989	Displaced the rights of the father in favour of the welfare of the child.
HFE Act 1990	Severed biology from fatherhood, establishing a non-genetically related man as the father, and putting the family unit over individual genetic ties
Child Support Act 1991	Links fatherhood with genetic liability and financial maintenance.
Family Law Act 1996	Emphasises the importance of the genetic connection by making an ideological commitment to keeping post-separation/divorce fathers in touch with their children.
Adoption and Children Act 2002	Reinforces the concept of fatherhood as being achieved through progenation rather than familial relationships, by giving unmarried fathers the same rights and status as unmarried fathers.
Adam and Jo Rose (2002)	Emphasises the importance of the genetic connection in terms of the welfare of the child.
Leeds Teaching Hospitals NHS Trust vs. A etc. (2003)	Cements legal fatherhood as genetically determined status, but fragments 'fatherhood', allowing multiple father figures.
Re R, RE D and Re R (2001 -2005)	Cements legal fatherhood as genetically determined status, but fragments 'fatherhood', allowing multiple father figures.
Removal of donor anonymity (2005)	Emphasises the importance of the genetic connection in terms of the welfare of the child.

Figure 1. Trends in the law and fatherhood

Chapter 2 - Fatherhood and society

“In the past there were ‘new fathers’ at every turning point in civilisation, because paternity is a socio-cultural institution which is incessantly transforming under the pressure of multiple factors”

(Knibiehler 1995) p201

The ideology of fatherhood can be characterised as being what any given society in any given time period expects fathers to do. In a sense, the ideology of fatherhood is the combined image of everything that society considers ideal in a father – how a father should act, what role he should take on within the family, how he should interact with his children etc. Thus, when we look at the ideology of fatherhood, we are looking at the image of the father, as society thinks he *ought* to be. When we can see what society expects of fathers, we will then be in a position to see what society thinks a ‘father’ is. We can then compare this with the legal construction of fatherhood, and evaluate the extent to which fatherhood as a legal construction and as a social-cultural ideal differ.

The changing culture of fatherhood - A brief macro-historical analysis

Historical analyses of fatherhood have shown that the expectations placed on fathers have varied with time and social and economic changes (Griswold 1993;McKee & O'Brien 1982;Pleck & Pleck 1997), and “reveal the socially constructed nature of fatherhood images” (Marsiglio 1995b) p3; but they also show that at any given time there were relatively clearly defined roles for

fathers - and so long as fathers fulfilled that role little more was expected of them (Burghes, Clarke, & Cronin 1997; Entwisle & Doering 1988). It is also, however, clear that generalising fathers' roles and placing them strictly within a particular historical epoch can lead to the oversimplification and masking of the diversity of father's roles (Burghes, Clarke, & Cronin 1997) given that fathers throughout the ages have engaged in, and identified with, a variety of different roles, some consistent with societal expectations, and some not (Burgess 1997).

Whilst many commentators differ in the details (dates, terminology etc), there is widespread agreement that the culture of fatherhood has evolved over time, moving through certain specific ideologies. Pleck, for example, argues that in 18th and early 19th century colonial America, fathers were perceived to be primarily the moral overseer of the family, responsible for ensuring his inherently sinful children did not succumb to their evil impulses, and to exert his superior reason and intellect over the 'weak and vulnerable' mother of his children (Pleck 1987). In the early 19th to mid 20th century, as social attitudes towards women began to change, and scholars and educators began to emphasise the importance of a feminine influence on children, the father as 'moral overseer' gave way to the 'distant breadwinner'. As well as appealing to shifting gender ideologies, Pleck makes sense of this move in terms of increased industrialisation and the resulting decline in men working from home. As fathers had to move out of the home and into the workplace they necessarily spent less time with their children resulting in greater maternal involvement; and with their influence in the home now displaced fathers

focussed on their breadwinning roles. As this occurred, their status as a *good* father became dependent upon their ability to support their family. Pleck suggests that the result of this shift in ideology was that a father's authority in the home diminished, and although he continued to be the final moral arbiter and disciplinarian, he did so in a way that was removed from family life, and tended to become involved only when the mother's authority failed. The war years brought with them a change in attitude towards the paternal role, which has, again, been attributed to changes in attitudes towards women. Perhaps as a result of wartime experiences leading to the perception that people needed to grow up strong and tough, or perhaps because of the effects of war leading to a reduced male presence in society, people became concerned about the 'excessive mothering' of children and began to emphasize the importance of having a masculine role model. The ideal father became the father who was "the principle transmitter of culturally based conceptions of masculinity and femininity" (Biller, quoted in Pleck 1987, p93). The 'gender role model' father had a direct role to play in the raising of his children, but was warned against becoming too involved. Pleck quotes a guide for expectant fathers, which suggests that a father should not be present at the birth, but should instead pass the time as if he were an accountant, calculating the money he would save from the new dependency claim he could soon make.

In Griswold's more detailed analysis of fatherhood in America, it is suggested that the move from breadwinner to gender role model might be explained in terms of economic hardship (Griswold 1993). The difficulty in finding work

during the depression may have led to fathers becoming more involved with their children, as they were at home more often. Thus the depression, and the war years, according to Griswold, “set in motion forces that would ultimately have a profound impact on fatherhood” p160. Rotundo’s analysis sets a similar picture (Rotundo 1985). The early 17th to 19th century was dominated by the patriarchal father, wielding great power over his children and his family, but also shouldering the responsibility for them¹⁶. He was expected to provide for the physical necessities of life, and was also responsible for their moral and spiritual growth. Rotundo contends that the ‘modern father’ began to emerge in the early 19th century. As commercialisation grew and fathers became less of a presence in the home, fathers became less able to fulfil the traditional patriarchal role, and began to concentrate on providing economic support; and as this became the defining father role the ideology fell in line.

Little scholarly attention has been directed towards performing this kind of macro-historical analysis of fathering in Britain, but we can find evidence that these broad trends were occurring here also. One parenting book (Winnicott 1957), compiled from a series of BBC radio broadcasts in the late to post WWII period, contains a number of articles giving advice to parents with young children. Exclusively, the book is directed towards mothers, which suggests that fathers were not expected to concern themselves with childcare. The one chapter that deals with the father role, tellingly entitled ‘What about father?’, tells women what a father can and should do, and how

¹⁶ See also (Knibiehler 1995).

she can involve him. The three roles identified for a father in 1944, by a leading British parenting expert, were (i) to help the mother feel well in body and mind; (ii) to give the mother moral support and back up her authority in the home; and (iii) to act as an exemplar of positive qualities for the child. The mother was clearly considered the gatekeeper to the father's involvement with the children, as is clear from the following passage:

What about father? I suppose it is clear to every one that, in normal times, it depends on what mother does about it whether father does or does not get to know his baby. There are all sorts of reasons why it is difficult for a father to take part in his infant's upbringing. For one thing he may be scarcely at home when the baby is awake. But very often even when father is at home, mother finds it difficult to know how to make use of her husband, and when to wish him out of the way. No doubt it is often far simpler to get the baby to bed before father comes home, just as it is a good idea to get the washing done and the food cooked.
(Winnicott 1957) p81

The image of the father here is of an absent breadwinner who requires his wife to facilitate a relationship between himself and his child. His role at home is to support his wife so that she can run the home and raise the baby, and to act as a positive role model for his child, but without the need to interact with it. Thus, we have the image of the father as breadwinner, back up disciplinarian and role model, which is generally consistent with the American macro-histories. Mogeys paints a similar picture in his socio-cultural analysis

of paternal power, claiming that paternal authority had declined substantially in the preceding century, and linking this decline with socio economic factors such as the entrance of women into the labour force and the compulsory schooling of children (Mogey 1957). Once women enter into the workforce and earn their own wage, Mogey claims, they become more independent and less subject to their husband. Similarly, when children go to school they are taken out of the home, and therefore away from the father's influence, and become less dependent upon him. Although Mogey makes no claims about what a father's role should be (though he is clearly of the view that the decline of paternal authority is detrimental to the family and to society), he paints a picture in which the traditional father role of powerful patriarch gradually became eroded, leaving both scope and necessity for the reconstruction of fatherhood - although Mogey himself does not take this leap and, rather, thinks that paternal authority should be re-established.

These histories, both British and American, are dominated by the notion of the breakdown and gradual disintegration of patriarchal power, and this is summed up nicely by Blackenhorn as she dourly notes

...[T]oday's fragmentation of fatherhood represents the end point of a long historical process: the steady diminution of fatherhood as a social role for men. Over the past two hundred years, fathers have gradually moved from being the centre to the periphery of family life...In some respects it has been downhill for fathers since the Industrial Revolution (Blackenhorn 1995) p13

If these analyses are correct it appears that the ideology of fatherhood has evolved in accordance with what fathers are capable of doing at the time. When men enjoyed a 'natural masculine superiority', a good father was an all-powerful patriarch. When society began accepting that women were not naturally inferior to men, and as women became more 'powerful', fatherhood had to shift with the times. Other social pressures forced fathers to work long hours away from home, and the social/cultural climate became such that no-one would be a good father if the notion of a good father did not entail working long hours and acknowledging the important role of women. A good father, then, became a father who did the best that he could, given the social climate – he became a distant breadwinner. The father as a gender role model emerged as men became less able to fulfil their breadwinning roles. Defining fathers as gender role models gave men a way to be good fathers without necessarily being good breadwinners and, if Pleck is correct, it enabled men to reinforce masculine ideals in an era in which the over-feminisation of children was a concern. Fatherhood, then, has been continually reconstructed as if to maintain a place for men within the family. As the social and ideological climate changed, fatherhood had to change with it, and by changing it allowed men to reconstruct themselves as fathers in a way that enabled them to remain vital to the family, and thus justify their place within it.

This kind of analysis relies heavily what Smart and Neale characterise as the "traditional sociological paradigm in which changes to 'the family' are seen to come about because of changes (usually economic) that have occurred elsewhere" (Smart & Neale 1999) p9. We can see that the socio-historical

account of fatherhood that has been presented above relies on the notion that fatherhood has changed and developed in response to external forces, mostly economic and gender orientated. Whilst this functionalist model has, according to Smart and Neale, been the predominant perspective through which change in the family has been viewed and analysed, there are competing models. Once such model is offered by Giddens, who argues that changes in the family come about because, in modern society, individuals have come to understand themselves reflexively and have become conscious agents of change (Giddens 1992). Whilst I am neither a sociologist nor an historian, it seems to me that there may be room for both of these models. The sweeping ideological changes that have occurred in the culture of fatherhood do seem to have been driven by external forces. It seems clear that external economic and social forces have necessitated changes in the culture of fatherhood, but it also seems clear that fathers across the centuries have reacted *pro-actively* to these forces, and have sought to *actively* re-define themselves as and when necessary. Fathers, far from simply being the helpless subjects of externally driven change, have continually acted as conscious agents of their own change in response to these forces. This seems to be amply demonstrated by the fact that many fathers today are redefining themselves again, grasping on to the ideology of a new, involved, androgynous, kind of father, and actively seeking to change, and conform to this new ideal.

It is important to note, at this stage, that these historical analyses are 'macro' accounts, which means that they focus on general trends and dominant

ideologies. They predominantly represent white, middle class families, and do not in any way purport to say that these ideologies were reflected in practice¹⁷. It is certainly the case that there are no clearly demarcated points at which ideology shifted, and it seems likely that ideology in different classes may have moved/changed at different paces. The broad brush strokes with which macro-historians have painted the shifting ideology of fatherhood are intended to represent dominant ideology, and my focus here is on what is (or, for now, was) expected of fathers according to the dominant culture of fatherhood – not what fathers actually did.

The 'new father'

There is a widespread belief that the ideology of fatherhood is changing again (Daly 1995; Featherstone 2003; Henwood & Procter 2003; Parke 1996); that trends in fathering are moving towards a more involved model (Benson 1985; Entwisle & Doering 1988; Hall 1994); and that men's attitudes towards fathering are reflecting a desire to be present and active (Clarke & Popay 1998; Entwisle & Doering 1988; Furstenberg 1995; Russel 1983; Smeaton 2006; Speak, Cameron, & Gilroy 1997; Wilkie 1993). It seems that the traditional image of the patriarchal father, breadwinner and gender role model are perceived to be outdated, and that fathers today are expected to be much more involved in their children's lives and take more responsibility for their development – and furthermore, we are told that they *want* to. Smeaton argues that the traditional stereotype of the father as a distant breadwinner bears little relation to men's aspirations today, and claims "[t]he overwhelming

¹⁷ More will be written about this later.

majority of fathers are as confident as their partners in their ability to care for their children and would be perfectly happy to stay at home to care for them alone” (Smeaton 2006) p56. However, she also found that one third of the fathers in her study still considered breadwinning to be the most important aspect of fatherhood. Thompson *et al.* found that over half of the fathers in their study rejected breadwinning as the most important aspect of fatherhood, and concluded that:

[t]here is a general willingness amongst fathers to accept more equality in childcare responsibilities and to be more involved, thereby challenging traditional stereotypes...It is clear that fathers in general are keen to be more fully involved with their babies and the demand for [paternity] leave and the high level of take – up for the limited provisions currently on offer, are a clear indication of this (Thompson, Vinter, & Young 2005) pp5-6.

Similar findings were reported by Cohen, who found that men were trying to retreat from the breadwinner/provider role and embrace a kind of fathering that is more involved and more nurturing than the kind of fathering they received from their own fathers (Cohen 1993).

Alongside men’s changing attitudes, we are actively encouraged to empower men to take on this involved fathering role (Garbarino 1993; May & Strikwerda 1996; Torr 2003; Wintour 2007), and phrases such as ‘shared’ or ‘tag-team parenting’ (Dienhart 1998) are fast becoming buzz-words. The acceptance of

this nurturing, involved fathering ideal means that a father is expected to be intimately involved in the day-to-day lives of his children. He should take an interest in the pregnancy, attend the birth, change the nappies, share in the daily household chores, and spend 'quality time' with his children, forming lasting emotional relationships with them; and evidence also suggests that doing so is beneficial to children's development (Equal Opportunities Commission 2007).

Marsiglio claims this new father ideology has gained currency in popular culture in the form of the good dad/bad dad dichotomy (Marsiglio 1995a)¹⁸. Positive images of involved fathers are portrayed by the media¹⁹ whilst absent, uninvolved fathers are portrayed negatively, and Marsiglio contends that the stereotypes thus created, both positive and negative, are "likely to arouse feelings and expectations, among both fathers and those associated with them" p83. It is not clear, however, if these media images of the 'good father' are simply reflective of current trends in society at large, or if they are creating the image themselves and society at large is following suit. The most likely explanation, perhaps, is that the reality is a mixture of the two.

A study conducted by the *Working with Men* organisation²⁰, consulted over fifty fathers between November 1999 and January 2000 (Lloyd 2003). The men consulted were generally in agreement that the 'fathering role' had changed and that, as fathers, they felt that they were expected, and wanted,

¹⁸ See also (Furstenberg 1988).

¹⁹ See also (Lupton & Barclay 1997).

²⁰ A not-for-profit organisation, whose work supports the development of work with men through projects, resources, publications, training and consultancy (www.workingwithmen.org) .

to do more than their own fathers did in terms of care giving and time spent with their children. This supports the thesis that the prevailing ideology is that of the involved, nurturing, 'new' father. However, whilst some men welcomed this more involved fathering role, others regretted the changes and would have preferred to have the status that their own fathers had. Generally, it was felt that gender differences had an impact on the relationships men had with their sons and daughters, and that sons and daughters should be treated and interacted with differently. It also became apparent that the roles the men played within the family were very much driven by economics, and this significantly impacted on the way their responsibilities were negotiated with their partners. This study, and others (Furstenberg 1995;Horna & Lupri 1987;Russel 1983;Smeaton 2006) suggests that whilst the new involved father ideology is very much present, it is not as dominant as some commentators would have us believe, and that 'traditional' fathering roles, such as breadwinning and gender role modelling, are still part of the father ideology.

Asynchronicity: Culture vs. Conduct

Whilst acknowledging that macro-histories of fatherhood have a role to play, Freeman has expressed concern that:

...by reading the culture of fatherhood as representing the actual conduct of fathers, these master narratives falsely assume that men's diverse experiences accord with dominant cultural images of fatherhood. Not only does the historical accuracy of such

monolithic typologies of paternal imagery call for further critical scrutiny, but the conflation of ideological and material levels of analysis silences the complex impact that cultural concepts of fatherhood may have on the realm of individual experience (Freeman 2004) p62

What Freeman says is important, and it is vital to distinguish between the ideology of fatherhood in culture and the actual practice of individual fathers. What might be described as micro-histories of fatherhood, based on personal accounts and individual fathers rather than a sweeping cultural zeitgeist, tend to show that fatherhood and fathering practice has been much more varied than the 'master narratives' suggest, that 'nurturing' fatherhood has been around for longer than the macro histories imply, and that fathering can vary between class as much as between historical epoch (Burgess 1997; Lummis 1982; Lupton & Barclay 1997).

In the 1980s, whilst claiming that the new or 'androgynous' (Rotundo 1985) father was emerging as the dominant ideology, researchers also remained sceptical about the extent to which this ideal was put into practice (Pleck 1987; Rotundo 1985). LaRossa warned of the dangers of cultivating a 'culture' of fatherhood that was so far removed from the reality of fathering; because it may result in the vast majority of men being perceived to be failing in their roles. He claimed that:

[f]atherhood is different today than it was in prior times but, for the most part, the changes that have occurred are centred in the

culture rather than the conduct of fatherhood. Whatever changes have taken place in the behaviour of fathers, on the basis of what we know now, seem to be minimal at best. (LaRossa 1988) p456.

Lewis and O'Brien were also keen to remind us that whilst many people readily concluded fathers were becoming more involved in family life, such assumptions are hard to justify (Lewis & O'Brien 1987). Whilst the new father image quickly became the 'public face' of fatherhood, various studies showed that the traditional patriarchal and breadwinner values were still very much present (Backett 1987; Craig 2006; Lamb, Pleck, & Levine 1987). Elsewhere, Van Dongen found that men's aspirations concerning the amount of parenting responsibility they take on are not generally reflected in the amount of childcare they actually do. In her own words, "an inconsistency exists between paternal thoughts and deeds, between men's aspirations and the extent to which they are realised" (Van Dongon 1995) p103. She found that men report being more involved with their children than their fathers were, and that men express a desire to be involved in childcare, often regretting the fact that that are unable to be more involved. What is also apparent is that their desire to be involved in childcare is often in competition with their perceived breadwinning responsibilities²¹. This indicates that whilst it may well be the case that men are starting to see themselves in terms of being a caretaker, they also still see their role as a father being closely tied in with breadwinning. More recently, Clarke and Popay have found that a discrepancy exists between men's ideologies of 'new fatherhood' and their practice as fathers – and even when men talk about fatherhood through narratives of shared

²¹ See also (Baber & Dreyer 1986).

responsibility and equal parenting, both the men and the women in the study felt that it was the mothers who had 'full-time responsibility' for the children (Clarke & Popay 1998).

Lewis suggests that practical concerns about financial stability, and the fact that in many cases men are able to earn a higher wage than women, results in men 'caring about' their children rather than 'taking care' of them (Lewis 1995). On a similar vein, an article featured in the women's 'pop' magazine *Red* suggests that whilst 'modern' fathers feel they are expected, and want, to live up to the nurturer ideal, they find it hard to meld this role with their other responsibilities and ambitions, such as having a career and earning a wage (Powell 2006). One case study described by Powell (2006) tells the story of a man who tries to do just that, but finds he is met with resistance. He believes he is perceived to be 'less of man' because he is not doggedly pursuing a career, and he has concerns that his partner might not feel as attracted to him now that he is being less than traditionally masculine. It seems, then, that there are many barriers to living up to the new ideal of fatherhood, and these barriers are constructed both in economic terms and in terms of being perceived as a threat to a man's sense of masculinity.

This leads us to another plausible explanation for the apparent asynchronicity between ideology and behaviour, and that is that the new father ideal seems to be at odds with traditional notions of masculinity, which idealises men as emotionally detached, stoic, self-reliant and dominant, and sees men's roles in terms of provision and protection (Harris 1995). Whitehead notes that:

While being a 'new father' implies a break with increasingly dated ideas of traditional male roles, and therefore carries with it some cultural capital for men, in practice it can often mean little more than a symbolic attachment to the *idea of being a father* rather than a full, equal and unmitigated engagement in its harder practices. (Whitehead 2002) p154

He goes on to say:

...traditional gender stereotypes remain salient in many cultures. Thus we have to recognise that while there is some shift in attitudes to family and domestic roles by some men, dominant discourses of masculinity do not sit easy with those practices...Given the harsh and at some times brutal character of men's (fathers') involvement in the private sphere, and the compelling attraction the public realm holds for many men and their sense of masculinity, it is perhaps not surprising that, like the 'new man', the 'new father' remains a relatively rare species. (Ibid) p154

The point is a simple one, and is supported cross-culturally (Fox 1999; Marsiglio & Pleck 2005); what makes a good 'man' often seems to be incongruent with what makes a good 'father', and these tensions might well lead to some men choosing masculinity over fatherhood. This also makes sense insofar as the masculine role will always, necessarily, predate the

paternal role. Boys become 'men' before they become fathers (normally), and so it is not simply a matter of going against the masculine tide, but the letting go of something that is already enshrined in one's world view.

The fact that the conduct of fathers is not keeping pace with the culture and ideology of fatherhood need not affect my present task – which is predominantly to look at the normative aspects of fatherhood; what fathers are expected to do and what fatherhood should be. Even if it is the case that the conduct of fathers is not keeping pace with the culture or ideology of fatherhood, it is almost certainly the case that the ideology of fatherhood has evolved to demand more involvement from fathers. A man is generally considered a good father if he is involved and nurturing, and so long as he fulfils this aspect of fatherhood he is unlikely to be labelled a 'bad' or 'deadbeat' dad, even if he cannot support his children and/or family financially. The ideological emphasis on involved fathering has led many to believe, rightly or wrongly, that a father is as equally responsible for all aspects of raising his children as the mother. Given the fact that there are barriers to living up to this ideal, this has almost certainly led many men to feel guilty that they are not spending enough time with their children. The present ideology of fatherhood entails that a father is not perceived to be meeting his responsibilities if he is not, in some way, involved in nurturing and caring for his children. Thus, simply being the breadwinner or disciplinarian is no longer sufficient, and a man is not a good father unless he is caring for his children on a day-to-day basis. This image is reinforced to some extent by recent scholarship, which focuses on the father's role in child development. It is now

widely accepted that fathers do have a salient role to play in child development (Equal Opportunities Commission 2007; Lamb 1997; Lewis & Warin 2001; Parke 1996), and the growing momentum of the 'father's rights' movement suggests that many men are willing to take on this role and the responsibility that goes with it, even when their relationship with the child's mother has broken down. We should, however, be cautious of assuming there to be a willingness in men to take on a level of equal responsibility – even those who actively support the father's rights movement. One particularly telling Canadian study has found discrepancies between the public rhetoric and the private discourse of men involved in the movement. In public, the members of such groups will adopt the rhetoric of equality and state quite forthrightly that they want equal access, equal rights and equal responsibility. However, when questioned in private the story changes. Many, indeed most, of the men interviewed did not actually want full and equal responsibility, but only to be allowed access to their progeny when they wanted it (Bertoia & Drakich 1995). Even accepting this, it is also clear that those men who *do* accept this involved ideology can find it hard, in practice, to break out of the 'traditional' father role.

Chapter 3 - Conclusions

What we have seen above is that 'fatherhood' is a multi-faceted concept with different legal and ideological constructions, each with different roles and expectations attached to them. If there is one common thread running through them all it is that fatherhood is in a constant state of flux and is generally subject to larger social changes and trends.

Fatherhood in Crisis?

Knijn has argued that fatherhood is in a state of 'crisis', and blames this crisis on the fact that men no longer know what 'being a father' entails (Knijn 1995). Contributing factors to this 'crisis' include; (i) the legal position of fathers being such that many men feel they are losing their 'rights' as fathers, creating a climate of perceived injustice; (ii) the fact that fatherhood is being separated from biology, and that the once defining mark of fatherhood – an assumed biological relation within marriage – has now been rendered unnecessary; and (iii) the image of the 'new father' is representative of the 'crumbling' of traditional fatherhood, and that men are becoming more likely to want to be *seen* to be a good father and present themselves publicly as such. She suggests that men's public presentation of themselves as good fathers may be part of a "universal process whereby power and control are lost" p3, and this places fatherhood in the public eye, to be debated and discussed, through which we come to a better understanding of what it is we expect from fathers. Her suggestion seems to be that the placing of fatherhood into the public eye is an expression of a feeling of powerlessness and confusion, illustrative of

the 'crisis', that is aimed at 'paving the way' for the re-construction of fatherhood via a 'democratic communicative process of change'. As such, this crisis need not necessarily be seen in a negative light, although she notes that, as with all 'crisis', it is 'sadly' accompanied by feelings of anxiety, opposition to change, and personal vindictiveness.

I agree with Knijn that fatherhood is in a 'crisis', where, following Williams, 'crisis' means "a point of contestation and change, rather than a catastrophe" (see Williams (1998,) footnote 3, p67) and that this is because fatherhood has become such a confused and ill-defined notion that is not at all clear what it is to 'be' a father. However, if this crisis is to have the positive effect that Knijn hopes for it should be helping men to reconstruct themselves as fathers in the modern age, much like it has been reconstructed in the past. It should be clarifying fatherhood rather than muddying the waters. As it stands, however, men can be left feeling confused and powerless, and this can be attributed to the variety of mixed messages they are getting from all corners of society.

The evidence seems to suggest that, contra Knijn, 'traditional' fatherhood is not crumbling, and those traditional models of fathering are still very much present; they have just become tempered by the *addition* of a more nurturing and involved ideology. The addition and acceptance of this nurturing ideology has led to many men finding themselves in the middle of a tug of war between two roles (nurturer and breadwinner) that cannot often co-exist happily, leading to feelings of guilt and confusion about what it is they *ought* to be doing and which role *ought* to be fulfilled. Although traditional models of

fathering are arguably not crumbling, we are, as Williams notes, no longer able to take these models for granted (Williams 1998).

The situation is further confused when we see that a father is primarily defined in law in terms of a genetic connection, and his paternal responsibilities are met through discharging a fiscal responsibility. This is in conflict with the prevailing nurturer ideology, which defines fatherhood in terms of care and role fulfilment. The waters are muddied further by the fact that when conception is medically assisted fatherhood is defined legally in terms of his relationship with the child's mother and a man's choice to 'become a father', which separates fatherhood from biology entirely. This definition is then put under strain by a growing emphasis on the child's right to the 'genetic truth', which emphasises the importance of the genetic connection between father and child, allowing a third party into the family unit and undermining the rationale that lay behind the original legislation. Williams sums up the problem more eloquently than I am able:

All these different changes have challenged the economic, legal, moral and biological conditions of fatherhood and the masculinities on which they feed and upon which they depend. Furthermore, new cultural representations of fathers as active, involved and equal partners in the business of childcare, whether married or unmarried, have forced reconfigurations of the more traditional image of the semi-detached, present-but-distant, breadwinning family man for whom marriage granted

rights and responsibilities. It is this destabilising of the taken-for-granted notions of paternal masculinity which is at the heart of the debate over the 'crisis' in fatherhood... (Williams 1998)

p67

A normative problem

All of this leads to a climate in which a man may be unsure of what it takes, both legally and morally, to be responsible for and to have rights to raise 'his' children. He may not even be sure what it is that makes a child 'his'. Men are told by the law that they have responsibilities towards their genetic children, and yet it has been made clear by the widespread practice of adoption, and now the use of ART and donor sperm (and the associated legislative reforms that give parental rights to non-genetically related fathers), that genetics and paternal rights and responsibilities are not bound together by an unbreakable thread. Men are told that in order to be good fathers they must spend quality time with their children, and yet there is a feeling that the courts are preventing many men from being 'good fathers' simply because they are separated from the children's mothers. It seems possible that by enforcing financial liability, and not enforcing contact orders, the law is forcing men to be 'bad fathers' against their will – emphasising the financial liability generated by the genetic link, but downplaying the legitimacy of the desire of men to become involved fathers (if not in theory then at least in practice). It can be said, without leaving any hostages to fortune, that in the current climate, a man simply might not know if he *ought* to feel responsible for 'his' children.

One source tells him he should, and one another tells him he should not. He is sometimes lambasted for not living up to the social expectations of fatherhood, and he is sometimes prevented from doing so. Collier observes that the problematising of fatherhood has led to new normative understandings of what good, or good enough, fatherhood is, or should be, implying that the current crisis in fatherhood can be described in fundamentally *normative* terms (Collier 2001). The question that needs asking is not 'what *are* fathers doing?', (although this question certainly has its own importance), but 'what *should* fathers be doing?', 'what expectations *should* fathers have', and 'how *ought* we to characterise fatherhood?'

It is this normative crisis that has led philosophers and legal theorists to theorise about what it is that grounds fatherhood, paternal responsibilities and paternal rights. Some argue that a genetic connection is necessary and/or sufficient to have paternal rights and responsibilities, whilst others have argued that a social connection (the 'act of fathering') is sufficient and/or necessary. Others argue that nothing is in itself necessary to have paternal rights and responsibilities, but a number of things might be sufficient depending upon the circumstances. There are various philosophical accounts of what makes the genetic connection important and other accounts that emphasise its lack of importance. The debate is large and fluid, and what follows in the next section is an attempt to draw together some of the major themes and principles within that philosophical debate.

Section two – The Philosophy of Fatherhood

Chapter 4 – Setting the boundaries

The purpose of this section is threefold. Firstly it will provide a comprehensive review of the philosophical literature on paternal rights and responsibilities, and secondly it will explore the strengths and weaknesses of the theories on offer. Thirdly, and most importantly, it will serve to illustrate how reliant philosophy in this area has become on the use of intuition, introspection, and conceptual and empirical assumption. In the ensuing discussion, it will become apparent that in proposing or rejecting theories of fatherhood, philosophers have tended to make assumptions about what 'fatherhood' as a concept means. They have assumed certain fathering ideologies to be prevalent, and they have appealed to these ideologies in support of their claims. Also, counter-examples to their theories are often rejected on the basis of being counter intuitive, and many objections and possible alternatives are dismissed on the grounds that they run contrary to intuition or that a generic and unqualified 'we' would think otherwise. Essentially, this comes down to a use of *reductio ad absurdum* – an argumentative technique of rejecting a proposition on the basis that if it were true it would be absurd (or ludicrously counter-intuitive). This technique is not itself controversial, but it becomes philosophically problematic when it is relied upon as the basis of an argument. Such an argument is based upon an assumption that certain states of affairs are, *a priori* or after introspection, unacceptable or implausible, which seems to defeat the purpose of a philosophical investigation. However, with a topic like fatherhood, which is generally as

close to the heart as it is to the mind, it is entirely understandable that people make use of their intuitions and introspections. In fact, it is hard not to. When rational moral debate comes to its end, we have nothing *but* intuition, and it is most often the case that when rational people disagree on moral matters, they disagree over fundamental moral intuitions. The question to ask, then, is if we accept that intuition has a role to play in argument – and indeed I accept that it does have a role as the final, ‘irrational’, arbiter of rational debate – how do we ensure that it does not take over in the ‘question begging’ way that it has, as I propose to show in this section, in the philosophy of fatherhood.

One possible solution, as will become clear as we progress, is to encourage philosophers to make use of intuitions other than their own. If, for example, I reject a genetic account of fatherhood on the basis that we would not consider a gonad donor to be the father of the recipient’s offspring (Bayne 2003), we had better be confident that, in general, it *is* counter intuitive not to hold the gonad donor responsible and consider him a father; and to do this I need to access intuitions other than my own, and the generic and unqualified ‘we’ needs to become specific and qualified. If I use as a premise in my argument, as Benatar does, the claim that parental responsibilities are robust and weighty and that “this...view is the one that most of us hold” (Benatar 1999), I need to be able to back up that claim. The claim that ‘we’ feel the way that the philosopher claims we do needs to be empirically plausible and preferably empirically justified. The value of using this kind of empirical justification, particularly within bioethics, which is a branch of moral philosophy that deals exclusively with *real* human need and its practical implications, is that it

enables the philosopher to ground him or herself in *humanity* rather than logic. It enables the philosopher to ensure that he or she is using ethical concepts and ideals that are reflected in, and acceptable to, the people around whom the debate revolves and whom any emerging theory, if put into practice, would most affect. As I have argued elsewhere (Ives 2008), it seems unlikely that as a philosopher I can engage productively with a subject of which I have no experiential understanding. By engaging 'productively' with a subject, I mean to engage with it in way that enables the philosopher to come up with a normative solution to a normative problem, which respects and reflects the realities of the problem rather than dealing with it in an abstract and idealised form. Good ethics, as Shakespeare has noted, is not just about good arguments, it is about people (Shakespeare 2006); and to fully appreciate the ethics of paternal rights and responsibilities, we need to be able to appreciate how fathers themselves view fatherhood as a normative concept. Unless this is done, it will not be possible to appreciate how the theory will impact upon the reality. The data that I will present in section four of this thesis suggests that theorists who have engaged with the philosophy of fatherhood are not always in touch with the reality of fatherhood, both as a practice and as a concept – and this is something which will be emphasised throughout this section. Their assumptions and ideologies lead to their theories reading just as much as 'personal confessions' (Nietzsche 1998) as philosophical arguments. This is not in itself a criticism – a personal confession provides an interesting and stimulating starting point for debate – but if we want bioethics to engage with, and have an effect in, the real world, it is important that it is less a personal confession and more an informed and critical reflection on the

normative structures with which it is engaged. What I have done in this project, as will become clear, is to empirically document many 'personal confessions', engaged with them critically, and produced a philosophical framework for the acquisition of paternal rights and responsibilities that is reflective of and sensitive to the realities of fatherhood as a normative practice

Now that this somewhat tangential, but necessary, sign-posting is out of the way, my focus will return to the main purpose of this section, which is to review existing literature, elucidate its strengths and weaknesses and, importantly, to illustrate the widespread reliance upon 'personal confession', intuition, introspection and empirical and conceptual assumption.

Paternal rights and responsibilities – some semantic clarification

Before using the terms 'rights' and 'responsibility' it is important to be clear how they are to be used in this section. Previously, I used Bainham's terminology to distinguish between three kinds of parent. I used the term 'parental responsibility' to refer to the bundle of rights *and* responsibilities that accompany parenthood in its fullest sense. This section is concerned with the philosophical grounding of 'parental responsibility' (as previously defined), as applied to fathers. As we are looking primarily at paternal responsibility (as opposed to paternal *and* maternal) I shall from now on replace 'parental responsibility' with 'paternal responsibility' (PRE), which will refer to all the rights and responsibilities associated with fatherhood in its fullest sense. I will also have need to refer to the individual notions of 'rights' and 'responsibility' that are contained within PRE, and to that end 'paternal rights' (PRI) will refer

to any rights encompassed with the notion of PRE, and the responsibility encompassed within PRE will be referred to as 'paternal obligation' (PO). PRI will be taken to include any right, positive or negative, which is associated with PRE. PO will be taken to include any responsibilities that come with PRE: i.e. whatever a father is obliged to do with respect to his children.

Theories that attempt to ground PRE do so by showing how POs are generated and then demonstrating how PRIs follow, or vice versa. Given that PRE, as we have defined it, is the aggregative bundle of PRI and PO, a man cannot be said to have PRE unless he can be shown to have both PO and PRI. It is important to bear in mind, then, that the theories we will be examining seek to establish PRE on the basis of establishing both PO *and* PRI.

Some theoretical constraints

There are a variety of competing accounts of PRE, each one taking some distinctive kind of relation between father and child and trying to establish its superior normative force. Some accounts seem to be compatible with many others, and may, combined, contribute towards what Bayne and Kolers have termed a 'pluralistic' account of parenthood, in which many relations may be seen as sufficient to ground PRE but none as necessary (Bayne & Kolers 2003). Other accounts are not compatible with any other, and provide 'monistic' accounts, claiming that one particular relation is both necessary and sufficient. I do not intend here to divide the accounts into pluralistic and monistic, as any theory of PRE can be either, depending on the intentions of

the theorist. The pluralism/monism debate is one that must come after a grounding of PRE has been established. Only when this has happened, will we be in a position to determine if the particular grounding of PRE that is being defended is the only legitimate grounding, or if it is simply one of many. The purpose of this section, then, is to map out the varying accounts of what grounds PRE, place them in relation to one another, and begin to critically assess their basic tenets. The aim of this section is not to forward any novel account of PRE, or to definitively reject existing ones, but to show their strengths and weaknesses, and to make explicit the way they tend to make use of moral intuition, introspection, and conceptual and empirical assumption.

Before I begin to examine and evaluate the various theories that have been offered, it is important to set out a framework according to which they will be evaluated. This is necessary because unless I first identify what work I want a theory to do, I will not be able to assess whether or not it is successful in doing it. The selection of these criteria is unavoidably a somewhat *ad hoc* process, and I take my lead from Dworkin's *The Theory and Practice of Autonomy* (Dworkin 1988), in which he stipulates what criteria he expects a plausible theory of autonomy to meet. In setting out criteria against which a theory of autonomy will be judged, Dworkin gives himself a frame of reference from which to assess the strengths and weaknesses of a theory. Here, I have adapted Dworkin's criteria in order to provide myself with a frame of reference from which to assess a theory of fatherhood. I will set out what I want a theory of fatherhood to achieve, and in doing so I will stipulate a set of

conditions that any theory of fatherhood needs to meet if, in my eyes, it is to be considered successful.

1) *Logical consistency* - Borrowed from Dworkin, this criterion dictates that a successful theory of fatherhood must be internally coherent and must not contain logical inconsistencies.

2) *Normative function/Fit for purpose* – The theory must not simply be descriptive, but must be action guiding. It must be suited to the purpose for which it is intended, that purpose being to help in the resolution of complex problems pertaining to the allocation of PO and PRI.

3) *Intuitive force* – It must not be counterintuitive to the extent that it inappropriately imposes obligations or grants rights. This is not to say that the theory should be intuitively driven, but only that it should work with moral concepts that are palatable and that it should not make moral demands that seem wholly inappropriate. Whilst it is quite correct that any normative theory be allowed to challenge existing views in order that it does not serve to simply reinforce existing values and prejudice, there is a difference between a theory that presents a challenge to existing values and one that polarises them and dictates that we act in such a way as to transgress our sense of right and wrong to that point that our actions seem to us wholly immoral. I am speaking, here, of a kind of reflective equilibrium (Rawls 1999), in which our existing moral concepts are given weight alongside rational evaluation.

This criterion also borrows elements of Dworkin's 'Ideological neutrality' constraint, by which he means the 'rather weak' constraint of the theory being accessible to a wide variety of ideological outlooks, and not just to a few individualistic ideologies. When we combine this with my characterisation of 'intuitive force', we come up with a criterion that dictates a theory should not be dependent upon individualistic intuitions, but accessible on a level of general intuitive congruence.

4) *Empirical plausibility* – Again, borrowing from Dworkin, the theory must be in line with, and must not contradict, empirical evidence. It cannot be based on empirical claims that are unfounded, make claims that are empirically false, or work with concepts that are unrealistic. If a proffered theory of fatherhood relies upon untrue empirical claims, depends upon claims about general intuitions that are unjustified, or makes use of general concepts that are in fact individualistic, the theory will not meet this criterion

5) *Conceptually encompassing* – the theory must account satisfactorily for both PO and PRI, so that it encompasses all aspects of PRE.

With these constraints in mind I shall now turn to the critical evaluation of various competing accounts.

A Rough topology

Theories of fatherhood can be placed into a rough topology, which splits accounts of PRE into *Genetic*, *Causal* and *Social*. In these accounts, a

genetic relation, a causal relation, and a social relation, respectively, are taken as providing grounds for PRE. What all of these accounts have in common is that they try to ground the acquisition of PRE in something concrete. They all argue that if a man stands in such and such a relation to a particular child, then he acquires PRE in virtue of that relation. They try to say who *ought* to have PRE over a child, where this 'ought' is distinctly moral in nature. Over the next four chapters, these three kinds of account will be examined in detail.

Chapter 5 - Genetic accounts

Genetic accounts of paternal responsibility are so called because they all, in one way or another, appeal to the genetic connection between ‘father’ and child in order to justify the acquisition of PRE. One factor that all genetic accounts seem to have in common is that they do not take into account any social aspects (with the notable exception of coercion), but only the fact of genetic connectedness. They do, however, differ in their explanation of how this fact is supposed to generate PRE, and it is these differences that we shall now examine.

Genetic-Proprietary accounts

Genetic-proprietary (GP) accounts appeal to notions of property and ownership to justify PRE. The idea tends to be that a man owns his genetic material in the same way that he owns any product of his body, and that this ownership extends to any child ‘comprised of’ that genetic material. This type of account works by first establishing PRI. The PRI in question is a kind of property right, which would then, presumably, give rise to the responsibility associated with ownership – the PO.

The GP account offered by Hall appeals to Lockean notions of self-ownership to establish property rights over one’s genetic progeny (Hall 1999). She initially explores and rejects the proposition that PRI may be grounded in a Lockean ‘labour theory’ on the grounds that in surrogacy arrangements ‘we’ intuitively wish to place PRI with the genetic parents and not the gestational

mother, regardless of the fact that the latter arguably commits more labour to the project. It is here that we have the first example of the use of an intuition being given argumentative authority. It is clearly not the case that it is evidently intuitive to give PRI to the genetic parents in surrogacy arrangements, and the opposite intuition was clearly expressed by the authors of the Warnock Committee, whose report was the driving force behind the *Human Fertilisation and Embryology Act 1990*, which clearly stipulates in section 27 that it is the gestational mother (and not the genetic mother) who has legal parenthood (both rights and responsibilities). Hall has based her rejection of a Lockean labour theory on the authority of an intuition that is only individualistically intuitive, which essentially begs the question against gestational accounts of motherhood. She obviously feels that the genetic parents should have PRI rather than the surrogate, and so she bases her argument against the gestational mother's rights on the assumption that those rights belong to the genetic parents – and hides this assumption within the rhetoric of intuitive implausibility.

Instead of utilising the 'counterintuitive' labour theory of ownership Hall correctly observes that it is notions of self-ownership that underpin Locke's labour theory in the first place (unless I own myself my labour is not mine, and thus cannot be used to acquire property – so, the basic premise of the labour theory must be that I own myself) and constructs the following argument (paraphrased).

P1 A person has rights over that which he owns.

- P2 A person owns his own body (self-ownership).
- P3 If a person owns his own body, he owns his genetic material.
- P4 If a person owns his genetic material he owns the products of his genetic material.
- P5 A man's genetic child is the product of his genetic material.
- C Therefore, a man owns his genetic child.

If a man owns his genetic progeny, then in virtue of his ownership he has property rights. It is not, however, made clear by Hall what these rights consist of and how they might lead to full PRI by further establishing PO. It seems plausible to assume that the rights she has in mind are identical to property rights, and it is hard to see how she could claim otherwise given that her account entails ownership. This would then entail that PO, for Hall, would be identical to the kind of responsibility that comes with ownership, and similarly PRI would entail the same kinds of rights that come with ownership.

If this account works it might provide what Kolers and Bayne have described as a 'strong geneticist' account (Kolers & Bayne 2001), meaning that it is an account on which a genetic connection is both necessary and sufficient to generate PRI. They claim that, if Hall's account were correct, it would be the case that the only man able to have legitimate PRI for a child is the genetic father, and that this PRI is akin to a property right.

I disagree with their assessment that Hall's account is one of Strong Geneticism, even on their definition, as I can find nothing in it to suggest that the genetic connection is *necessary* for PRI. Hall certainly seems to think that it is sufficient, but nowhere is it claimed that it is necessary. In her concluding paragraph she claims that her self-ownership theory gives a 'rudimentary justification' for parental rights, but does not at any point make the claim that *only* a genetic connection can legitimatise the acquisition of PRI. In fact, if she is to be consistent in her thinking of children as property, then she must hold that just as ownership and responsibility for a horse can be legitimately transferred from one person to another, so can ownership of and responsibility for a child. Thus, a necessary condition of PRI may be, on her account, that ownership be formally transferred, but it could certainly, it would seem, be transferred²² to someone who is not genetically related to the child. If this is the case then her account does not claim the necessity of the genetic connection, but only the sufficiency.

Children as property

One initial objection to Hall would be to challenge the claim that children can properly be thought of as property. A long line of liberal thought claims otherwise, which has its foundations, somewhat ironically, in the political philosophy of John Locke (Locke 2003a; Locke 2003b). Despite Hall's reliance on Locke's theory of self-ownership, Locke himself rejected the idea that children are the property of their parents, and devoted a large section of his *Treatise* to rejecting this claim against a political contemporary of his, Sir

²² More will be written about transference later.

Robert Filmer. Locke considered the father/child relationship to be like that of a custodian and his charge, rather than an owner and his property. The secular basis of this claim is that he thought children are persons in themselves, in virtue of which they have the right to continued life and liberty that, to quote Archard, “trumps any prospective rights on the part of others to own one”, (Archard 1993) p9. The view that children have a right to life and liberty, whilst relatively new (Hart 1991), has become so enshrined in the Western moral outlook that any theory requiring us to believe otherwise would seem to fail on the grounds of lacking intuitive force – or perhaps even of being positively immoral. To even argue *against* such a view might be to take it seriously in a way that is inappropriate. Strong evidence of this fact is that the rights of the child to life and liberty are enshrined in the *UN Convention on the Rights of the Child 1989*, giving children freedoms that are simply incompatible with being owned. These include the right to life (article 6), freedom of thought (article 14), freedom from sexual exploitation, sale, trafficking, and any other form of exploitation (article 34-36). This Convention, ratified by 192 parties, is perhaps the clearest evidence that children are today considered to have rights as individuals (Cohen & Naimark 1991), and this has been characterised as denoting progress towards human dignity (Wilcox & Naimark 1991). These rights seem incompatible with children being the sorts of things that can be owned.

However, it must be noted that here, again, is an example of the use of *reductio*, in which a GP account is challenged on the grounds that, counter-intuitively, it views children as property. Although this *reductio* is rather a

compelling one, it is not philosophically definitive. This challenge to the GP account on the ground that it treats children as property is based on a strong moral conviction that amounts to a denial of the premise – a clash of moral intuitions – that reflects very different, and incompatible, moral outlooks. However there is still scope for rational debate, and this requires us to look at the nature of the property relation that might exist between father and child. The moral repugnance that people may feel at children being considered property might simply reflect a naïve and inadequate conception of property relations, and in order to do GP accounts justice this needs to be explored – but before this is done it is necessary to briefly look at the genetic proprietary account offered by Engelhardt.

Engelhardt argues that children are rightfully the property of their parents (Engelhardt 1996). The parent's right of ownership, he argues, comes from a Lockean labour account of the acquisition of property in which ownership is generated from mixing labour or effort into common property. The idea literally seems to be that by labouring on X I put a bit of myself into X, and since I own myself then I own X. He argues that only those creatures that are "self-conscious, rational, free to choose, and in possession of a sense of moral concern" (p136) are full moral persons, and that it is only those kinds of creature that cannot be owned by another. He does not think that children are the kinds of creature that possess those faculties, and thus claims that children can properly be property. Hanson objects to this view, arguing that to view children in this way places them in the same moral category as "a piece of furniture built in the garage or a meal made in the kitchen" (Hanson 2005)

p182. If a child is equivalent to a piece of furniture built in the garage, surely I am then entitled to break the child up for firewood if I am cold? If a child is equivalent to a meal I made then surely I could eat my child if the freezer is empty? In making this point Hanson appeals to what he assumes is a deep rooted moral conviction that children cannot and should not be treated in this way, and it is clear from the preceding discussion that this conviction is not just a personal confession.

However, Engelhardt seems to recognise this, and has tempered his account by insisting that parents should not act malevolently towards their children. There is no further discussion of this, but if we are being charitable we might suppose that by this he means that parents, although having ownership of these children, should treat them kindly – i.e. should not dispose of them at will or eat them. However, this does not seem to go far enough to satisfy Lockean-style objections. Engelhardt's tempering amounts to simply imploring parents to be kind to their children (though there might be other, better, reasons for not acting malevolently towards children, which I will discuss later). It is not based upon any right of the child as an individual, and makes non-malevolence towards one's children supererogatory rather than obligatory. The point is that I may be encouraged by my chef friend that a meal I make should be treated with love and care, or by my carpenter friend that if I make a piece of furniture I should look after and maintain it, but if I *own* them I am free to ignore this advice. If Engelhardt wants to claim that parents should not treat their children malevolently, whilst maintaining that they are nonetheless property, he needs to find a morally relevant difference

between a child and a piece of furniture that will give us reason to treat them differently, even though we acquire ownership of them in exactly the same way. One way to achieve this may be to claim that children are people, and that we have an obligation not to act malevolently towards people. However, even if such an obligation could be established, the option is not open to Engelhardt, who insists that it is precisely because children are *not* full moral persons that they can be owned in the first place.

An alternative way out for Engelhardt is to ground an obligation not to act malevolently towards one's children in their potential to become full moral persons. This kind of potentiality argument has been well rehearsed in the debate over the status of the embryo, and it is not something I want to spend much time on here as there is little that I can add to it without dedicating more space to the subject than I can afford. Hopefully it will suffice to make one, brief, observation that might cast doubt on the plausibility of Engelhardt successfully making use of this defence. The way children are characterised as being neither self-conscious, rational, free to choose, nor in possession of a sense of moral concern, in virtue of which they are not full moral persons, seems to bar the way to giving them *any* moral consideration at all. The point made by the potentiality arguments in the status of the embryo debate is not that the embryo currently has no moral status but should be protected because it might one day come to possess it but, rather, that the embryo *has* moral status because it has the potential to become a 'full person'. Its potential to be a person *one day* gives it moral status *now*. Engelhardt makes a point of claiming that because children do not possess the necessary

faculties they are not full moral persons and thus can be owned. To then make use of a potentiality argument would be tantamount to saying ‘a child is not a full moral person, but because it has the potential to be a full moral person one day, it *is* a full moral person’– which makes very little sense.

It seems, then, that the only way for a theory such as Engelhardt’s to satisfy the ‘intuitive force’ criterion, would be to adopt a more sophisticated and complex conception of proprietary relations that does not treat children as chattel – and this, I imagine, is what he had in mind. Hanson argues that ‘ownership’ is not an apt description for the relationship between parent and child, and one way to avoid this criticism is to define ‘ownership’ in such a way that the description becomes apt. If it can be established that ownership of a child is a different kind of ownership, that does not give a father the rights to dispose of, eat or sell the child, then the GP account becomes much more palatable.

In jurisprudence, ownership tends to be thought of as a ‘bundle’ of rights. A property right is not thought of as a ‘monolithic whole’ (Dickinson 2005), but as comprised of many ‘smaller’ rights, such as:

- The right to physical possession of an object;
- The right to its use;
- The right to its management;
- The right to any income derived from its use by others;
- The rights to its capital value;

The right to security against it being taken by others;

The right to transmit it to others by gift or bequest;

The right to transmit it to others by sale. (Honore 1961)

Penner has noted that one problem with the 'bundle' view of property rights is that it is difficult to tell whether any, and which, rights are essential and which are not (Penner 1997). "It is not even clear" he states, that "there is any workable notion of 'enough' rights to make up a property bundle" p2. This is a fair point but, even so, it seems plausible to suggest that the more of these rights I possess in relation to A the more I might plausibly have a claim to own A. Similarly, the fewer of these rights I have the less it looks like I own A, but I can still be said to stand in some kind of a proprietary relation to it. The fact that there is not a clear cut off point does not make the bundle view unworkable, but simply means that borderline cases may be difficult to determine.

What is appealing about the bundle view is that it enables us to view ownership as a continuum, along which all points may be said to constitute ownership to varying degrees. This is appealing because it allows us to accept that there are many things that we can then be said to properly own, even though we do not possess all the rights, in full degree, in the bundle. A good example to illustrate the point may be that of home ownership. Many people can be said to properly own their own homes, but there are often restrictions on that ownership. I have the right to *sell* my house, but if it is mortgaged I require the permission of my mortgage company before I do so. I

have the right to *use* my house, but there are restrictions on what I can use it for. I could not, for example, turn it into a brothel, and I would require a license to turn it into a bar or a slaughterhouse. I have the right to use it to hold a party, but this is subject to my not infringing on the rights of others with regards to noise levels and privacy etc. I have the right to derive income from my home, but this is subject to property and income regulations. I might even have a house with a preservation order, which means that although I own my house I am very restricted in terms of what I can add to or remove from the building.

I can be said to properly own my house, but I possess very few of the rights in the bundle above, in relation to my house, unequivocally. If I only had one of those rights my ownership may well be questionable, but the aggregative sum of the rights in that bundle that I do possess seems to constitute all that is required for ownership *of a house*. A similar point may be made with respect to ownership of one's body. Even if I do own my body there are some things that I am not allowed to do with it, such as sell parts of it (at least in the UK). Another example may be that of animal ownership. I can own a dog, but I am not allowed to torture it. One way to view these examples is that they show one cannot properly own a house, an animal, or oneself. Another way to view them is as demonstrating that different kinds of ownership apply to different kinds of things. It seems plausible that the kind of ownership we can have will depend on the kind of thing that is owned, and we should not presume that ownership of a child entails the same kind of proprietary relation as ownership of a piece of furniture. I can destroy a piece of furniture at will because

furniture has no interest in not being destroyed, whereas the same cannot be said of a child.

It is plausible, then, to suggest that simply because of the kinds of things children are (for example that they have interests, can feel pain and have an emotional life), ownership of a child entails the right to physical possession and management of the child, but subject to the condition that the exercise of those rights does not impinge the interests of the child. A father may have PRI in virtue of the child being his property, but the fact that the child is his property does not entail that the father can do with the child as he wishes, because the property right bundle that constitutes ownership *of a child* just does not contain the right to dispose of or sell etc. It is not, therefore, a condition of ownership that the owner is necessarily free to do what he will with his property, and so the fact that a father is not free to do what he will with his child does not entail that we cannot appropriately think of a child as 'being owned'. It seems natural that we should be reluctant to think of children as property if our conception of property involves the right on the part of the owner to dispose of, or sell, as he could a toaster; but once we acknowledge that property rights do not necessarily entail those kinds of rights, we have less with which to find fault on the GP account.

However, this defence does not seem to be open to Engelhardt. This is primarily because in order for us to place children in one category of owned things rather than another (i.e. in the category that does not have in its rights bundle the right to dispose of) there must be some relevant difference

between a child and, say, a toaster. This difference, as we have already noted, is that a child has interests of its own. Unlike a toaster, a child has an interest in staying alive, it has an emotional life and it feels pain. However, if children do not possess the necessary faculties to be full moral persons why should the fact that a child has these interests be at all morally significant? The answer is that, if one subscribes to Engelhardt's view, they are not at all significant.

Whilst the preceding discussion has not argued conclusively for or against a GP account (and this was never its purpose) it has shown, quite clearly, the influence that moral intuition has on the debate. The initial rejection of a GP account, based on the intuition that children are not property, was based on a gut moral response and an assumption about what being property entails. Further, the discussion has shown that when we move beyond that gut reaction, and examine the concepts we are working with in more detail, it becomes far from clear that our initial repugnance was justified. Whichever side of this particular debate a person stands will depend on their core beliefs regarding the status of children as full moral persons and the definition of ownership/property rights that they choose to accept.

We can see that Hall was motivated into rejecting a Lockean labour theory because of her belief that the true mother is the genetic mother in surrogacy arrangements. Engelhardt is able to put forward his GP account because he is happy to think of children as property and rely on the good nature of parents not to treat their children badly, and Hanson's (and Locke's) objection

to this kind of view is driven by the moral conviction that children are not property and have rights as full moral persons that are incompatible with being owned.

The self-ownership paradox

Another, and perhaps more damaging, problem for GP accounts is that they tend to imply a rather paradoxical state of affairs in which a person is supposed to be able to simultaneously own himself and be owned by another. If I have a child, then I own that child in virtue of my own self-ownership extending over the child, who is an extension of my own self. This is the case both for Hall, who derives ownership directly from self-ownership (see above) and also for Engelhardt, who indirectly derives ownership from self-ownership via Locke's labour theory of property acquisition (see above also). However, by the same reasoning I am owned by my parents, and so on *ad infinitum*. The problem is that if I am owned by my parents then I do not own myself, and if I do not own myself I cannot ground my ownership of my child in *self-ownership*. So, in order for a child to own his progeny he must be concurrently owned by another and be self-owning – which is a contradiction.

Hall tries to evade this paradox by suggesting that as a child grows it gains autonomy and acquires self-ownership (Hall 1999). This seems to rest on the notion that my self-ownership extends over my children because my children are part of myself. As the child grows it gradually becomes more 'of itself' and less 'of me'. The parent gradually becomes proportionally less a part of the child, and the parent's claim to property rights/power of trusteeship diminishes

proportionally until it is so minuscule that the (now adult) child can be said to properly own itself.

However, Kolers and Bayne have noted a particularly trenchant problem with this story (Kolers & Bayne 2001). There are two ways in which Hall's account could be read. It could either be read as appealing to the material constitution of the child ('you were once a part of me'), and claiming that my child's body is literally made from my body, or it could be appealing to the child's genetic constitution ('you as a product of my genes'), claiming that my child literally has my genes in its body and is derived from them. On either reading we run into problems.

If Hall intends the latter 'genetic' reading, then she cannot claim that the parent's property rights diminish. In their own words:

Genetic derivation does not decline over time the way material constitution does, so the genetic derivation argument cannot explain the decline of legitimate parental control as the child grows.

(Kolers & Bayne 2001) p276

The genetic contribution a parent makes to a child does not fade with time, and does not become proportionally less as the child grows into adulthood. It remains constant, and this makes it difficult for Hall to say that a child can come to own itself. If it is the genetic contribution that entitles the parent to ownership of the child, then that ownership must last for as long as the

genetic contribution lasts, which is for all the child's life. Thus, on the 'genetic' reading Hall is unable to deal with the self-ownership paradox.

If Hall intended the material reading, then she can deal with the self-ownership paradox for it would seem to be true that if a new born child was literally 'made from' material from the parent's body, then as the child grows, and eats, and replaces old cells and tissue with new cells and tissue, the extent to which the child is literally 'made of' the parent's material diminishes with time. However, the material reading faces other particularly damaging problems. Hall wished her account to be compatible with the 'intuition' that it is the genetic parents, and not the gestational mother, who should have PRI in surrogacy arrangements. It is for this reason that she rejects Locke's labour theory of property rights. However, on the material reading she would have to acknowledge that the gestational mother has a greater claim to ownership than either of the genetic parents, given that it is the material from the body of the gestational mother that actually 'make up' the child. For this reason she would be compelled to reject the material reading or to accept the claim of the gestational mother, which would undermine her foundational premise.

It seems that there is a rather obvious way out of this dilemma for Hall, but she is reluctant to take it for what are, to my mind, rather odd reasons. The way she might escape the dilemma is to reject the notion of 'diminishing ownership' and instead opt for a 'competing rights' account. She could argue that a parent's claim to ownership of a child remains constant, but that this

right is eventually trumped by the child's right to autonomy. Such an account would sit comfortably with the idea of property rights as 'bundles'. A father would always stand in a property relation to his child, but as the child grows up and acquires the rights of an adult citizen to make its own choices, the parents become unable to exercise many of the rights that form the bundle. This view seems to be supported by the fact that the parents of adult children do seem to retain some parental rights. For example, the right to have a say what happens to the child if it dies, or the right to be consulted as medical decision-making proxies if an unmarried child becomes incapacitated. This seems consistent with the idea that parental rights remain throughout the child's life, but that they are normally trumped by the rights of the child once it reaches adulthood. Hall has clearly considered this option, suggesting that the parent might be seen as having a 'trusteeship' over the child. Trusteeship, we might suppose, is a weaker form of property right that has a smaller bundle. She goes on to say:

It seems reasonable to assume that it is at the age of majority that the parental 'hold' might conflict with the child's self-ownership and autonomy, and because we believe that the latter is of greater importance than the former, parental governance should dissipate. (Hall 1999) p80

She then rejects this explanation on the basis that it would imply we could then not find fault with any child who abandons his or her needy parents, or feels no filial duty or obligation. She seems to be suggesting that if a child's

right to autonomy and self-ownership trumped a parent's right to ownership of their child, then the child could no longer be said to have any kind of filial duty.

This seems odd because it would entail an account of filial duty that relies upon parental ownership. Hall is saying that once a child ceases to be owned by a parent - or at least once the child's right to autonomy trumps that of the parent to exercise their entire bundle of property rights - the child no longer has any obligations towards its parents. It is, at least, plausible to think that a father's responsibility for his child might stem from his ownership of that child, but it seems wrong to think that if a child has a duty to its parents, then that duty comes from the fact that it is owned. If the notion of filial duty is plausible in the first place it would make much more sense to think of it as arising from the care that had been given, and the love that has been offered, than from being the property of parents.²³ I feel a duty of gratitude towards my parents because they loved me and looked after me; because they sacrificed their own needs for my own. The fact that I feel some duty towards my parents comes from the fact that I feel I owe them something in return for all that they have given me. It comes from a felt obligation to *reciprocate*. If this were the source of filial duty then it would remain intact even if we accept the competing rights account that Hall rejected. The only reason she feels she cannot use such an account is because she has adopted a very odd, and unnecessary, stance on the source of filial duty.

²³ English argues that children do not in fact owe their parents anything. Parenthood, according to English, is a voluntary act, more akin to friendly gesture than a debt incurring favour (English 2002). She accepts that there are many things that children ought to do for their parents, but insists that these are not duties but consequences of a loving relationship - see also (Ackerman 2000; Callahan 1985; Hardwig 1997). Despite disagreeing over exactly what is owed to whom, there is general agreement that if a child owes anything to its parents, it does so out of 'debt of gratitude', and not because it is the property of its parents.

Hall rejected this option for bad reasons but, perhaps unsurprisingly, there are good reasons to do the same. The difficulty is this. If a child is such that it can legitimately be owned in the first place it seems that it is not a thing that has the capacity to *autonomously* acquire the right of self-ownership, and so it would remain owned until ownership is relinquished. This places Hall and the GP theorist on the horns of another dilemma. Either they must go back to the original 'diminishing ownership' theory of how children come own themselves, or they must make the claim that children come to own themselves at the age of majority because their parents voluntarily relinquish ownership. If the first option is taken, then they run straight back into the self-ownership paradox. If they take the latter option, analogies to slavery are unbounded. They would have to acknowledge that should a parent decide not to relinquish ownership then a child may remain property for all its life. Furthermore, we would be denying children from birth that most basic of civil liberties – freedom. She would have to hold that people are born as property, and in order to be free they require that freedom to be given to them, which is in direct conflict with the notion of freedom as a fundamental human right. As Archard has noted, some historical cultures have found no problem with this notion, but it is an idea that today 'we' find morally repugnant (Archard 1993). To jump onto this horn would, it seems, lead to the GP account failing the intuitive force criteria – but this only constitutes a valid objection if the intuition is correct, and this cannot be rationally established. This is the case because there is no logically binding reason why children *must* be viewed as persons and not property. We can acknowledge that children have interests, that they feel

pain, and that they have an emotional life – but this in itself offers no rationally binding reason to reject the GP account. These considerations, in fact, only have normative force if I already consider them to be morally significant, and the fact that I consider them morally significant reflects more my moral education and the moral mores of the society in which I was brought up than they reflect rational deliberation. Why do I value a child's interests? I just do – and that is the bottom line of moral argument. If this is granted, and if it the case that most moral argument eventually comes down to accepting or rejecting claims based upon their congruence or otherwise with our moral intuitions, then the aim of a moral investigation into the grounds of PRE should perhaps be to find a theory that fits with these basic moral intuitions; and this is because if any theory we come across does not fit them it will likely as not be rejected anyway, for that very reason. More will be said about this later.

Summary

The main problem with establishing a GP account of PRE is that it requires us to accept the notion that children can properly be thought of as property. Even if we can get by the initial problem of counter intuitiveness by appealing to a more sophisticated 'bundle' conception of property rights, we still seem to end up the horns of a dilemma, one of which leads us into a paradox, and one that requires us to accept that children are owned and cannot become self-owning without being 'released' by their parents.

The 'children as property' view is at the very least counter-intuitive, and at the most morally repugnant. Of course, this is no logical ground for rejecting the account. Surely the purpose of our endeavour is to go beyond our intuitions? History has taught us that the moral certainties of one era can be morally offensive in another (child labour, the slave trade, the 'wrongness' of homosexuality, to name a few), but the problem in this case is that in order to revise our intuitions about the wrongness of thinking of children being the property of their parents requires us to take what seems like a backwards step. It *used* to be the norm to see children as property, but that norm was rejected because it ceased to be morally acceptable. And this was not the result of moral argument from philosophers, but of a fundamental shift in our moral outlook.

However, whether or not this is sufficient ground to reject the GP account will depend upon the prevalence and force of this moral intuition. Maybe Engelhard's view *is* representative of the majority of our society, and if it is then the counter intuitive objection simply ceases to work. If we are to base our rejection of an account on the basis being counter intuitive, then we need to look at intuitions other than our own, and we should be wary of assuming that what we take to be the prevalent morality of a society (as reflected by its laws and customs) is actually reflective of the views of the individuals within it.

Genetic-Causal accounts

Genetic-causal (GC) accounts hold that PRE is acquired through a causal relation, of which the genetic connection is undeniable evidence. The

essence of this type of account is the claim that, in the absence of any coercive forces (rape etc.), the genetic contribution of a man is sufficient to generate PO because the child would not have come into being 'but for' that genetic contribution, and that PRI follows as a means of discharging PO.

Callahan argues along these lines, claiming that biological fatherhood necessarily brings with it permanent and indispensable duties (Callahan 1996). These duties, he claims, stem from engaging in an act of procreation and leads to becoming causally responsible for the creation of a life. Callahan begins with a basic moral axiom;

Human beings bear a moral responsibility for those voluntary acts that have an impact on the lives of others; they are morally accountable for such acts. pp162-3

Assuming the validity of this axiom, he argues that to voluntarily engage in sexual activity, from which human life may result, is to voluntarily engage in an activity that has an impact on the lives of others – notably the life of the child created – and we have a moral responsibility for the consequences. Nelson has provided a similar version of the GC argument, claiming that making available one's gametes for procreation, either through consensual sex or sperm donation²⁴, places one in a morally significant causal relation with any child produced (Nelson 2000). He concedes that many people may have *some* causal responsibility for any child born, but it is the provider of the

²⁴ Nelson is particularly concerned with sperm donors but we could assume that his argument extends to gamete donors in general.

genetic material that has prime causal agency, and who is therefore ultimately responsible. Nelson makes exceptions of cases of coercive sex, such as rape, but maintains that in all other cases, one is responsible for one's offspring, whether procreation was intended or not.

Fuscaldo has objected to the Callahan/Nelson position on the grounds that it is implausible to hold everybody accountable for every GC role they play (Fuscaldo 2006). She produces an account of an unlikely conception, and suggests that such cases show the account to be inadequate. Her case is as follows:

According to Dr T G Capers of Vicksburg, on the 12th May 1863 during a battle of the American Civil War a young soldier friend of his was hit in the scrotum by a bullet that carried away his left testicle. The same bullet apparently penetrated the left side of the abdomen of a young woman nursing the injured nearby. To her surprise, 278 days later, the woman gave birth to a healthy baby boy. The infant was shortly after operated on to remove a malformed bullet. Dr Capers concluded that this was the same bullet that carried away the testicle of his young friend and, with some spermatozoa on it, penetrated the ovary of the young woman.

It seems implausible to suggest that the genetic link between the gamete providers and the child, in the civil war story above, entails that the soldier is responsible for his care. Our intuition is, I believe,

that even though the soldier and the nurse are part of a causal train of events that led to the child's existence, his birth was an unforeseeable accident. I suggest that the gamete providers above are not accountable for the boy because we are not accountable for *everything* that we are causally connected to, including things beyond our control. p6²⁵

Whilst I believe that Fuscaldo is correct to say that our intuitions would not hold the soldier responsible for the child, I think that she is mistaken about the implications this has for the GC account. Even if Nelson/Callahan would want to say that the soldier is responsible for the child (which I would doubt), their account does not require it. On both accounts, one is held responsible for any intentional or unintentional conception resulting from voluntary (or non-coercive) reproductive activity, including sperm donation. However, it is far from clear that the case cited by Fuscaldo counts as a case of *reproductive activity*, yet alone a voluntary one. Whilst the soldier may in some way be causally connected to the birth of the child, it is not in virtue of any action on his part. Nothing that the soldier did had any impact upon what happened. It is true that if he were not in the way of the bullet then his spermatozoa would not have been on the bullet, but similar arguments, of the kind 'if she hadn't been there she could not have been attacked', in the case of rape are readily dismissed as extending too far notions of causal responsibility. The case of the soldier is more akin to a case of non-consensual sex than a voluntary action. The soldier was literally assaulted. Spermatozoa were forcibly

²⁵ Although Fuscaldo presents this as a real life event, the story has been debunked elsewhere as fictional, purportedly arising from a joke article submitted to a medical journal (www.snopes.com/pregnant/bullet.asp).

removed from his body, and were forcibly placed into the body of the nurse. This is not an event that sits comfortably with the Nelson/Callahan GC accounts, which acknowledge that cases of non-consensual sex are an exception.

The example of the soldier does not, therefore, necessarily impact negatively on the GC account. What it does do is illustrate the key element in such accounts; that it is not the fact of 'genetic contribution' itself that generates PRE, but the fact of '*providing* a genetic contribution. This small, but very significant, linguistic difference is what leads Fuscaldo, in my opinion, to think that her illustration offers a counter to GC accounts. The word 'providing' here is meant to imply some kind of positive action of the part of the gamete provider, either through sexual activity or donation. In either case a *positive action* was taken to emit sperm on the part of the man, and it is this *active* causal role that generates PRE; whereas a *passive* causal role, such as that played by the soldier, does not. Another example might be the mistaken use, in the treatment of a woman by a fertility clinic, of sperm stored by a cancer patient for his own use in the future. Would we want to hold this man responsible for the resulting child? Arguably not. Although the emitting of sperm was active, the process by which it entered the woman was entirely passive, from his point of view. The emitting of sperm *per se* does not cause pregnancy, but only the entrance of sperm into a woman's body. Therefore this man's causal role was passive and he might not be held responsible. What Fuscaldo's example does do is illustrate fact that a genetic relationship

is not necessarily itself evidence of an active causal role, which GC accounts appear to imply.

This distinction, between passive and active causal roles, sits well with what seems to be a standard account of moral responsibility. We would not normally hold someone morally accountable if he were to get shot and, as a result, fall on and kill a child. It would certainly be true that the person shot was causally involved in the death of the child, but he exerted no causal agency. He had no choice. He did not *act*, but was *acted upon*. Similarly, if I were playing a game of indoor cricket and I batted the ball away at just the same moment that the far wall collapsed, and as the ball went shooting through the hole it hit on the head a person playing squash in the adjacent room causing permanent paralysis, I would not be held morally responsible for that paralysis. It is certainly true that I would have played a causal role in the paralysis, for if I had not hit the ball it would not have happened, but my role was completely passive, and it would not seem plausible to say that I should take responsibility for the long term care of the paralysed squash player. In light of this, I am inclined to the view that we can be properly held accountable for the consequences of our active causal roles, but not for our passive causal roles - providing that we had no prior duty to avoid being in a position where that passive causal role is played. This leads me to accept that the simple fact that one may be causally responsible insofar as one had a causal role does not entail that one is morally responsible. To be morally responsible, one's causal role must have been active, and not simply be the passive accomplice to an event beyond one's control. In other words, in order to be

morally responsible one must be causally responsible, but not all causal responsibility leads to moral responsibility.

This discussion, once again, illustrates the importance of moral intuition in this debate, as whether or not one accepts the distinction between active and passive causal responsibility, and the relative moral weight placed on each, will depend to what extent the examples used are congruent with one's own moral inclinations. I have used the common argumentative technique of appealing to examples of analogous cases in which the distinction seems to work – and this, yet again, is an appeal to moral intuition, using what are assumed to be established and unchallenged moral principles to justify their application in a 'like case'. If a philosopher is going to use this technique, then he should be able to defend the claim empirically that the principle to which he is appealing is as entrenched as it needs to be in order to support his argument.

Despite the fact that Fuscaldo's objection to the GC account does not seem to work, because her counter example relies upon the false assumption that GC accounts are necessarily insensitive to the difference between passive and active causal responsibility, there are problems with GC accounts that are not so easily dismissed.

Where the Nelson/Callahan position seems to run into trouble is when we ask for an independent justification of why it is the *genetic*-causal role that trumps all others. There may be many active causal roles played by many different

people, but the GC theorist wants to say that it is the causal role played by the *genetic* contribution that generates particular responsibility. To make this plausible a significant difference needs to be established between the genetic contributor and all other causally involved individuals.

One such difference may be the 'but for' condition. The claim might be made that a man is causally responsible, in the sense required to be morally responsible, if the child would not have come into being 'but for' his contribution. In this sense, the procreator has a unique causal responsibility for the particular child brought into being – for if his sperm was not 'in the right place at the right time' the particular child that was born would not have been born. However, this does not seem to be enough. It is true that the child would not have been the child that it is without the procreator's unique genetic contribution, but it may also be true that the procreator might not have engaged in procreative activity 'but for' the encouragement of his brother. It would certainly be the case that the child would not have come into existence 'but for' its grandfather meeting its grandmother. If there are difficulties during birth, and medical intervention is required to save the life of the child, then the child would not have been brought into this world 'but for' the actions of the doctor. Furthermore, the extent to which the genetic contribution is a major contribution at all may also be questioned. Laqueur does exactly that when reflecting on his decision not to donate sperm to a friend:

Since we apparently share 95% of our genetic material with chimpanzees, the sperm in question must share a still higher

percentage of base pairs with those of my fellow humans. In short, my unique contribution..., that which I did not share with billions of other men and monkeys, was infinitesimally small. I was making a mountain out of a much, much, much less than a molehill and not very much more than a molecule. (Laqueur 1996) p182

In light of such considerations it is not at all obvious that the genetic-causal contribution is large enough to trump other causal factors. With this in mind, the 'but for' solution does not seem to be much of a solution at all. It appears to spread the net too wide to be of any use to the genetic-causal theorist, because it cannot pinpoint what is special about the genetic connection.

Callahan seems to offer a different kind of support for his prioritising of the genetic connection. He makes the assertion that fatherhood just is a biological condition, and that paternal responsibility necessarily comes with fatherhood. It seems unproblematic to accept that having 'fatherhood' involves having paternal responsibility, and so the contentious claim here is that fatherhood is itself a biological condition. It is far from clear that fatherhood is a manifestly biological condition, and many theorists are now thinking of fatherhood as being more of a social condition, or at least accepting that there are many different kinds of fatherhood, biological fatherhood being one of them. Sheldon, for example, argues that the concept of fatherhood is fragmenting, allowing a child to have multiple fathers of different kinds (Sheldon 2005), and my own empirical research, as we shall see in section four, suggests much the same. In essence, Callahan's claim is

a factual one about the conceptual nature of fatherhood, and anyone wishing to argue against his view simply has to come up with a plausible but different conception of fatherhood. The best way for Callahan to strengthen his argument is to appeal to meanings that are, *in fact*, attached to the concept of fatherhood, and to look at the way the word is used. If this is consistent with the way that he uses the word, then his position seems a little stronger. However, this is something that he fails to do and, in fact, I will later provide empirical evidence that suggests 'fatherhood' is not a concept exclusively reserved for a genetic relationship.

The sperm donor problem

If it were established that the genetic-causal role did generate moral responsibility then sperm donors would have, contrary to the current legal position, PRE. The sperm donor voluntarily emits sperm specifically for the purposes of procreation. He certainly stands in a 'but for' relation to the existence of the child, and so it seems that he should be held responsible for any child resulting from his donation. Thus, one argument that can be levelled against the GC account is a standard *reductio*:

- P1 Sperm donors are not responsible for their offspring.
- P2 According to the GC account sperm donors are responsible for their offspring
- C Therefore, the GC account should be rejected.

There are a number of possible responses to this.

Firstly we could do as Callahan does and say that we are, and have always been, wrong not to regard sperm donors as having PRE. A second kind of response would be to say that sperm donors *are* morally responsible for any children conceived from their gametes, but that this responsibility is transferable to the recipient 'father'. Benatar for instance, argues that sperm donors do have weighty responsibilities for their genetic progeny, but that these can be transferred to other parties (Benatar 1999). He claims that most donors transfer these responsibilities too lightly and without due deliberation, and in this respect they behave badly; but, he maintains that in the correct circumstances transference can occur. These correct circumstances involve the genetic progenitor 'waiving' his responsibility on the understanding that the responsibility will be taken on by competent party. The use of the word 'waiving' implies that responsibility does initially lie with the genetic progenitor, and that it takes an active decision on his part to rid himself of it.

An account might thus be sketched wherein the genetic-causal relation is the only legitimate source of PRE, but once it has been generated for the genetic progenitor it can be passed on by him, and only by him, to another party. An analogy may be drawn with executive power in the UK. The only legitimate source of executive power is a democratic election, but once a government has been given this power it can pass on that power to other parties such as the police or the security services. Most theorists would accept that something of this sort can occur, and even Callahan accepts that another person may legitimately take on paternal responsibility for a child. However,

opinions are divided on whether or not responsibility can ever be completely transferred, or if it can just be taken 'on loan'. Callahan explicitly takes the latter view, claiming that regardless of whether or not another man has taken on PRE, the genetic progenitor never ceases to have responsibility for the child. Furthermore, should the child ever decide to make a claim on him, the genetic father is always morally obliged to help. Benatar's account seems to suggest the former, that once responsibility is properly transferred the genetic progenitor no longer has any responsibility. The executive power analogy seems initially to play into Callahan's hands here, as regardless of how much power the state transfers to other parties, the buck stops at Westminster. The Government remains ultimately responsible for the actions of the police and the security services. Power is 'loaned' to them on trust, on the understanding that they will use it properly. Similarly, 'absolute' GC theorists such as Callahan might argue that PRE may be 'loaned' to another person, but the genetic progenitor still remains ultimately responsible. However, the analogy is not complete, because the relationship between the Government and its various arms is very different to that between a progenitor and his child and the child's social father. When it loans out power, the Government has to put in place guidelines and directives to dictate and monitor the way that devolved power is used. It is the responsibility of the Government to check up on, and if necessary reign in, its deputies. However, for a progenitor to set up a similar system would arguably necessitate an intrusion into family privacy. Such an intrusion is acceptable on the part of a Government monitoring the activities of state employees whilst at work, but it is clearly problematic in the case of a genetic father intruding upon the family life of a social father and

'his' child. To give a genetic father that power seems wholly unacceptable, and so it seems that the analogy between devolving governmental power and devolving paternal power cannot be made comfortably.

The failure of this analogy does not, in itself, cause problems for Callahan; it just leaves him with a little less support and with the burden of having to explain the practicalities of how PRE is loaned out. How would it be monitored, and by whom?²⁶ These questions, again, are based on the intuition that it would be wrong for the progenitor to have the right to monitor the child and its 'devolved' social father, as to do so would intrude upon them in a way that seems unacceptable. Whether or not Callahan would deem it necessary for this responsibility to involve such a right is unclear. However, it seems that the only alternative would be to say that the progenitor has a responsibility up until the point someone else takes it on, at which point his responsibility ceases entirely. In other words responsibility is not devolved or loaned, but is actually transferred. This way, the progenitor has no obligation to check up on, and therefore is in need of no right to interfere with, the family. However, if this is the case then it is hard to say why or how responsibility could be transferred back unless the progenitor was willing to accept it – because in virtue of the previous transference he is under no obligation to do so. Callahan, then, must opt for the first horn, and either explain away or accept the fact that the progenitor might, despite initial feelings to contrary, have the right to intrude upon the family privacy of the child and its social father.

²⁶ He might also need to consider whether or not PRE can be devolved to the state, which is essentially what occurs when a child is taken into care.

The gap in the argument

Another possible counter to the GC account would be to make the general claim that being morally accountable for the existence of a child does not necessarily entail the moral responsibility to take care of it. This is an assumption that we have, until now, been labouring under, and it is one that can be challenged. It is open to the sperm donor to say '*yes I am morally accountable for the existence of this child insofar as I feely donated my sperm, but that does not entail any responsibility to take care of the child*'. This response may well also be employed as a general rebuttal to any causal account. The fact that I am morally accountable for the existence of a state of affairs only means that I can be blamed or credited for the existence of that state of affairs. It does not follow that I am morally responsible for actually dealing with the consequences.

Blunstein suggests that GC accounts are based on the assumption that through procreation a man and woman cause a needy child to exist, and so are responsible for meeting that need. He objects to this kind of account because he thinks there is a gap in the argument, similar to the one noted above:

The fact that parents have caused a needy being to exist does not in itself imply that they have any more of a duty to prevent harm and suffering coming to that child than anyone else. Some additional premise is needed. (Blunstein 1979) p116

Blunstein suggests that this additional premise may be found in the claim that the biological parents are in the best position to care for their children - better than anyone else in fact - and given that they are in the best position to care for the child, they should do so.²⁷ This move itself seems problematic – it doesn't necessarily follow that because I am in a better position than you to save a man from drowning (perhaps I am closer to him and would have less far to run) that I have more responsibility to save him than do you, or that I would somehow be more responsible should he drown. However, Blunstein objects to this move for other reasons. The only reason that procreators are in a better position to care for their offspring, he claims, is that society has tended to give procreators the rights that enable them to do so. We could plausibly imagine a social situation in which any person had the right to take decisions about a child's care, genetically related or not, and in that case the procreators would not be in a better position to care for their offspring. Such a situation was envisaged by Plato in his *Republic* (V, 460-462) in which he argued all children should be placed in communal nurseries, and a community of wet nurses should raise all the children. Procreators would not even know which children were their progeny, and would certainly be in no better position to raise them than to raise any other child. Objections to this Platonic ideal aside, this situation is conceivable and it suggests that Blunstein is correct in thinking that procreators are only in a better position to care for their offspring because of 'social custom' and not because of any superior natural capacity. Yet, despite this, the question of whether or not a genetic parent is in a better position to raise a child than a non-genetic parent is an empirical question,

²⁷ See also (Archard 1993).

and it is not one to which we have a definite answer. Current research does suggest that it makes very little difference either way to a child's development, but these studies are small, focus on donor-conceived children, and have focuses so far on pre-adolescent children (Brewaeys 2001; Golombok et al. 2002; Golombok 2000). As such, the data is suggestive but by no means conclusive.

Bayne and the question-begging gonads

A further attempt to reject a GC account has been offered by Bayne, by way of a counter example that is intended to show that it is implausible - and illustrates further the reliance upon intuition based *reductio* arguments and introspection in this field. The argument offered claims that when a man (B) receives a gonadal transplant, he receives a testicle that produces sperm that is not his own genetically. Thus, any child he conceives using this sperm is not genetically his own. If a GC account were correct, then we would have to consider the gonad donor (A) to be the father of the child. However, we do not do this, and in fact we consider the gonad *recipient* to be the father, and this shows that GC accounts do not work. In Bayne's own words, "intuitively, it is B rather than A, who ought to be held responsible" (Bayne 2003) p79, and he uses this as grounds for rejecting the GC account (which he calls 'biological geneticism'). This argument clearly makes use of a question begging *reductio*, because for the argument to work it must already be the case that the gonad donor does not have responsibility - which is the very conclusion that the argument wishes to make. The fact that an argument like this was published (however small a part it played in Bayne's overall

argument), in the *Journal of Applied Philosophy*, is striking evidence of how acceptable it has become in this field to base arguments upon intuitions. As I have already said, it may be for good reason that intuition and introspection plays such a large role in this literature, as these debates deal with very basic notions of right and wrong, of rights and responsibilities, that can rarely be effectively argued for using the traditional philosophical tools of logic and syllogistic argument.²⁸ However, it also seems clear that if this kind of argument is going to be used then it must be supported with evidence of these intuitions – rather than their simple assertion. Rather, when a claim about intuition or feeling is made it should be backed up by empirical evidence that the feeling is not just individualistic, thus reducing the likelihood that the argument offered is a ‘personal confession’ trying to be more than it is.

²⁸ Note also the use of ‘heinous deed’ objections to consequentialist moral theories. These objections are based on the fact that the theories denote certain actions as morally correct, despite the fact that they feel wrong, such as killing a homeless person to harvest his organs for transplants. Since these objections first came to light, consequentialist theories have evolved to accommodate these feelings (for example, (Scarre 1996)), and only very rarely have consequentialists been prepared to bite the bullet and ignore these intuitions.

Chapter 6 - Causal Accounts

The previous chapter looked at a particular kind of causal account that focused on the genetic connection as evidence of morally significant causation. There were, however, questions about whether the presence of a genetic connection really is evidence that one stands in a morally significant causal relation, and this was brought home by the fact that one may be genetically connected to a child without ever having engaged in the sort of activity that would normally make one morally responsible. Furthermore, if it is a genetic causal role that generates PRE we might have to think of sperm donors as being responsible for the genetic progeny, and we may not be able to think of adoptive or foster 'fathers' as fathers at all. Given this, if we still think that causation is the source of PRE, we may be able to find another causal role that does the job better than genetic procreation.

Causal-intentional accounts

A causal-intentional account claims that it is the intention to conceive/become a parent that is the prime causal factor in the begetting of a child, and as such it is the intention to become a parent that generates PRE. On this kind of account it is the people who instigate a parental project, with the intention of having a child, who acquire PRE. One such account has been offered by Hill.

As a legal writer, Hill is not only concerned with the philosophical exposition of notions of parenthood, but also with defending an account that is practical and workable in law (Hill 1991). He spends a good deal of time arguing against

competing 'biological' accounts of parenthood, which we shall gloss over as they do not add anything new to the objections we have already made to the genetic accounts outlined above. Once he is satisfied that he has dismissed the 'claims of biology' he sets out to defend his account of intentional parenting. He offers three defences to his claim that a 'parent' is a person who intends 'parenthood', and as such should acquire PRE. The arguments given in support his position will be outlined first, and then the problems with each will be examined.

The first defence is the 'but for causation' argument (pp414-5), which claims that it is the intentional parent who stands in a 'but for' causal relation to the creation of the child. The intended parents, the initiators of the parental project, are the 'prime movers' or the 'first cause', and as such, regardless of the fact that many others may have been necessary in bringing the child into the world (for instance doctors, other family members, gamete donors etc.), they are the people 'but for' whom the child would not have been born. All the other people causally involved would not have played their role, or indeed had a role to play, had the intentional parents not initiated the project. Stumpf has also argued this case rather forcefully, claiming that "[t]he mental concept of the child is a controlling factor of its creation, and the originators of that concept merit full credit as conceivers" (Stumpf 1986) p197. She claims that the rights and responsibilities accorded to the intended parents should respect their 'position of relative importance'. Stumpf seems to be claiming that the entire parental project would never have started if it were not for the original 'mental concept', and as such whoever is the originator of that concept, the

intended parent, is ultimately causally responsible for any child that results from said concept. It is worth noting again how this claim directly challenges the genetic 'but for' argument, in claiming that it is the intention, not the genetic contribution, which is the morally significant causal factor. Again, it is not so much argued for as asserted, for what could be said in its defence other than that it seems morally correct, or to make an analogy with other examples of intention being given moral significance (such as the *mens rea* of the criminal justice system).

The second defence is the 'Contract Argument' (pp415-6), which is chiefly aimed at surrogacy arrangements. Hill argues that any surrogate, or any other person involved in a pregnancy and conception who might otherwise legitimately claim PRE, must respect any preconception promises and commitments of all other parties. That is, if a surrogate is being used, if the surrogate promises to hand the child over to the intentional parents then that promise should be kept, and if necessary the surrogate should be held to it. Similarly if a sperm donor donates sperm to a couple on the understanding that he will not claim any paternal status then that promise should be enforced. This defence does not, of course, give us reason to accept an intentional account of parenthood, but it does argue that the moral requirement to keep a promise supersedes any claim that a gestational or genetic parent might have to a child, placing the intentional parents, to whom the promise is invariably made, in the position to claim parenthood.

The third defence is the 'Avoidance of Uncertainty Argument' (pp417-8), which claims that adopting an intentional account of parenthood would clarify in advance who is the parent of a child. If it were known to all parties that the intentional 'parents' are the only parents, that would mean no one else could or would hope/expect to become a parent, and the potential for a great deal of painful, lengthy and expensive litigation would be avoided. Furthermore, not only would the parents benefit, but so would the child – who would always be sure who its parents are.

Getting over Hill

From the defence Hill has given, it is clear that he has in mind an account that will clarify the position of people involved in assisted conceptions. His account is aimed at satisfying his intuition that it is the people who initiate the assisted conception project, the people who intend to become parents, who should eventually become parents. The intention also seems to be to avoid messy court battles that could negatively impact upon both the litigants and the children involved. To this end, Hill succeeds reasonably well.

However, the account runs into difficulties when we apply it to cases of natural conception. If a couple accidentally conceive, with no intention of becoming parents, then on Hill's account they would not be parents. If the child is carried to term with the explicit intention of rejecting it after birth, then the couple can do so, legitimately, claiming that they were never parents in the first place. This is, of course, already allowed, but it is deemed morally unproblematic only if the parents are incapable of raising the child, or if there

is some legitimate obstacle to doing so. Generally speaking, 'we' would not consider it legitimate for a couple to reject a child simply because they did not intend to become parents - although the fact that parents are routinely allowed to give up their children for adoption might seem to provide evidence to the contrary. However, the moral justification for adoption is based on the interests of the child. To put a child up for adoption simply because the child was not intended would not normally fall into of the category of good moral justification. Furthermore, the fact that giving up a child for adoption is an option does not mean that it is encouraged or morally unproblematic. In fact, the practice arguably developed in response to pressing social needs that could not be catered for by any other means. Adoption is tolerated, and in some instances welcomed as it represents some people's only chance of having a child, and in many cases this is quite right; but giving a child up for adoption is almost always something that is considered a last resort – something that is allowed not because it is good in itself but because it is better than the alternative. However, Hill's account suggests that to put a child up for adoption, simply because the child was unintended, is morally unproblematic – and this seems to be a dubious claim.

Perhaps more problematic is that Hill's account seems to justify and allow a man who 'accidentally' contributes towards a pregnancy, say during a one night stand, to evade all responsibility by claiming that as parenthood was never intended he is not the child's father. Although men regularly refuse to take responsibility for their progeny, it is generally considered that a man who does so is failing in his responsibility, rather than accepted that he had no

responsibility in the first place. This feeling is quite clearly reflected in the popularity (at the time) of a Government who made the Child Support Agency an election priority, and in the generally negative portrayal in the media of so-called feckless fathers or deadbeat dads (see section 1) who refuse to accept responsibility for their progeny.

Of course, these 'problems' are only problematic if we think that an account of PRE should hold consistently regardless of the circumstances of conception. If we were, instead, to think that what makes a parent in cases of assisted conception is different from what makes a parent in normal conception, then these objections to Hill may lose some force. Stumpf seems to take up such a position:

Although a reproductive act does not always involve an intent to create a child, the use of reproductive technology is an unambiguous indicator of intent. Users of such technology intend to produce a child and intend to accept the responsibility of caring for it... An intent to create and care for a child, acted upon through artificial procreation, is a positive intent that should be protected through law. (Stumpf 1986) p196

It may, in fact, make sense to maintain that what makes a man a father in one circumstance does not make him a father in another. We might say, then, that in cases of artificial reproduction it is the intent that generates PRE, but in cases of natural conception it is (for example) the genetic causal role. Whilst this kind of pluralistic view might seem appealing at first glance, it has its

problems. It is arbitrary and rather *ad hoc* to claim that what makes one person a parent might not make another person a parent. The main practical problem with such an *ad hoc* approach is that it would have to be able to definitively explain why intent matters when conception is artificial, but not natural. A practical response might be to say that it is, in fact, always overridingly significant, but we are only able to give it the significance it is due when reproduction is assisted, because no matter what men might be able to say about their intention where conception is natural their intent is clear when it is assisted. However, even if we accept this we still have to give an account of what we should take to be significant in natural conception, given that it is too hard to establish intention. Further, it is far from clear that men who undergo IVF treatment actually do want and intend to become fathers – as we shall later see when the results of the empirical project are discussed.

Further problems arise with Hill's account when we see that the avoidance of uncertainty argument applies equally well to any account of parenthood. If we accepted a GC account of parenthood we would avoid uncertainty, and the same goes for an account that claims PRE is generated by, for example, the consumption of cabbage during childbirth. The uncertainty argument gives us no reason to accept an intentional account over any other, but it does give us a reason to find, and stick to, *an account*.

The contract argument is also problematic, and this is because it is unclear that it does any more than simply holding people to their promises. The contract argument is perfectly consistent with the possibility that people can

become parents by genetic causation (for example), and all it actually says is that if a contract is in place, parenthood should be transferred to whoever the contract dictates. Thus, if we consider a surrogacy arrangement, the fact that a contract is in place between the surrogate and the commissioning parent does not rule out the surrogate becoming a parent, but only that when the child is born the surrogate is directed by contract to hand her parenthood over to the commissioning parent. Thus, the contract argument gives us no reason to accept an intentional account as an account of how fatherhood is generated, but only an account of how it should be distributed if there is a contract involved.

If the contract argument is going to be able to support the intentional account as a 'generation' account, it is best characterised as saying that parenthood is *contractual* - that people only become parents in virtue of having a contract to become parents (Gillers 2000). However, this would only appear to be useful or workable in an assisted conception context, where a surrogacy or gamete donation agreement is made in advance. Where conception is natural no contract is ever made, and so on such an account natural conception, in the absence of an explicit contract, would result in a child being parentless until an explicit contract is made. If no one comes forward, then the child remains parentless. Furthermore, for a contract to be valid it must be entered into knowingly and voluntarily, and this would imply that paternal responsibilities are entirely voluntary, which would call into question the justification for the activities of organisations such as the former CSA, which

work on the assumption that such responsibility, or at least fiscal responsibility, is not a matter of choice.

In a very real way, then, neither the avoidance of uncertainty argument, nor the contract argument, actually provides much of a defence of the intentional account, but only gives it wings if it is already flying. Thus, the whole intentional account rests on the 'but for' argument, and this is particularly problematic in this instance. Consider the following scenario:

Jim and Kim are a fertile couple who have no intention of having a child, but who would accept a child if they conceived accidentally. Nelly and Kelly are an infertile couple who desperately want to have a child. Nelly and Kelly have heard of Hill's intentional account of parenthood, and devise a plan to become parents. They sneak into the bedroom of Jim and Kim and sabotage their contraceptives. Jim and Kim conceive as a result, and Nelly and Kelly claim parenthood of the child on the basis that 'but for' their intention this child would not have been created

It seems that on Hill's account Nelly and Kelly's claim to be the child's parents is legitimate, because:

- A) The child would not have been created 'but for' the action of Nelly and Kelly.
- B) Nelly and Kelly were the prime movers of the parenting project.

- C) Nelly and Kelly acted with the intention of becoming parents to that child, whereas Jim and Kim did not.

It is certainly true that Nelly and Kelly engaged in criminal activity in order to become parents, and it is plausible to suppose that their claim to parentage may be rejected on that basis, but it still stands that, on Hill's account, *they do have a claim*. They are the intentional parents, and any attempt to say that Jim and Kim have a greater claim to the child can only come from their biological connection, as they did not want or intend to become parents.

If Hill wants to avoid this conclusion (which depending on his moral intuition he may, or may not), then he may yet appeal to Jim and Kim's intention to raise the child once they found out that they were pregnant. If, on discovering the pregnancy, Jim and Kim decide that they intend to be parents to the child they have conceived, then they also intend to become parents, and thus they have an intentional claim. The only problem now – and it is a large problem – is to determine whether it is pre or post conception intention that counts. Kim and Jim had no pre-conception intention to parent, but Nelly and Kelly have both pre and post-conception intent. The causal-intentional account gives no guidance as to how to choose between them. Hill would have to accept that 'but for' Nelly and Kelly, Jim and Kim would not have had to option of intending to parent post-conception. However, on the other hand the pregnancy would not be brought to term 'but for' Kim's intention to have the child. My own inclinations are to accept Kim and Jim as the intentional parents, because their decision to *keep* the baby is the big 'but for'. 'But for'

their decision not to terminate, the child would not be born regardless of the intention of Nelly and Kelly – but this, as we have already seen, is really a matter of moral preference.

Fuscaldo, freedom and foreseeability

Fuscaldo offers an account of parental responsibility which she claims is more in keeping with a plausible account of moral responsibility. She argues that we are “morally accountable for the intended and unintended reasonably foreseeable consequences of our free actions.” (Fuscaldo 2006) p10. Her account is somewhat incomplete insofar as it talks about being morally accountable for a child without going into any real detail about what that accountability entails. She does not, for example, discuss what obligations, if any, arise from being morally accountable for a child. What her account does suggest is that moral accountability does entail parental obligations of some kind, and it would seem reasonable to assume that if moral accountability entails PO then PRI may follow.

Fuscaldo’s suggestion is that parental obligations are generated when one is morally responsible for a child, and one is morally responsible for a child if the child was a reasonably foreseeable consequence of a voluntary action. By ‘reasonably foreseeable consequence’ she can be taken to mean that which any normal person may expect to happen as a result of their actions. This take on moral responsibility seems to be an amalgamation of a number of theoretical elements, which centres on the notion of accountability and free

choice²⁹. For Fuscaldo, to be morally responsible means that a person can be held accountable for an action and that in so acting the agent had the capacity to freely choose to do otherwise. Both of these concepts are closely tied to the notion of blame. If it is appropriate to blame, or give credit to, someone for a set of events, it is not sufficient simply that they *caused* those events but that they were free to do otherwise and either through intent or neglect, did not. Only then is it appropriate for a person to be held morally accountable, or to use Oshana's terms, for the agent to be an apt target for the demand of an explanation for his behaviour. Fuscaldo's notion of 'voluntariness' pays homage the notion that the action must be freely chosen (or that the agent had the choice to do otherwise); her use of 'foreseeable' pays homage to the idea that moral accountability requires some predictable connection between the cause and the effect. If accountability requires the agent to be an apt target from which to demand an explanation, then an explanation must be possible in terms of concepts available to the agent at the time of acting. If, for example, it was not known that smoking causes lung cancer, it is not apt to ask the agent who smokes for an explanation as to why he caused lung cancer – because the knowledge that links the two was unavailable to him.

This, straight away, would seem to rule out the allocation of PO to the soldier or the man with cancer (see *Genetic-causal accounts* above), as neither of them were engaging in actions that a normal person might expect to result in the birth of a child – and this, of course, is exactly what Fuscaldo's account is intended to do. The reasonably foreseeable stipulation also does not rule out

²⁹ It is beyond the scope of this thesis to explore deeply the literature on moral responsibility, although a good place to start would be Fischer's *Recent Work on Moral Responsibility* (Fischer 1999), Watson's *Two Faces of Responsibility* (Watson 1996) and Oshana's *Ascriptions of Responsibility* (Oshana 1997).

unintended consequences. If I drive whilst drunk, even though I do not intend to knock anybody down, I am held morally accountable regardless because knocking someone down is a reasonably foreseeable consequence of drink driving. I am an apt target from which to demand an explanation as to why I was driving whilst drunk, given that I know alcohol impairs driving performance and makes me a liability on the roads. The same would be true of smoking and causing lung cancer, and of having sex and causing a pregnancy. Regardless of the fact that I did not intend to bring about those events, the knowledge was available to me that links the event with the cause, and in that respect they were foreseeable.

What begins to become troublesome for Fuscaldo's account is that it is not tied to any specific type of causal interaction. If I act in such a way that my actions could reasonably foreseeably result in a child, then I am morally accountable for that child and consequently have PO. This would include a variety of actions, from sexual activity to contraceptive sabotage; from administering assisted conception, to sperm donation. The account enables us to assign PO to 'begetters', intended or otherwise, and it also enables us to acknowledge that a simple causal role (such as being genetically related) does not entail moral responsibility, and this absolves both the soldier and the donor from the examples above. However, it also seems to entail that a sperm donors and clinicians have PO.

It is not obviously wrong so say that all these people would be, in some way, morally accountable for the child. They each choose to perform an action that

resulted in a child being born. It does, however, become a problem when we have to hold that in virtue of being morally accountable, they are parents, and that they have PO and PRI. The problem is, then, that there are too many parents, and we have no way of distinguishing or choosing between them if (or when) they come into conflict. This is a practical problem, rather than a conceptual one, but it needs addressing nonetheless.

Fuscaldo acknowledges this as a challenge to her account, and offers a solution. She first of all questions the appropriateness of the assumption that a child can only have two parents. She cites several examples in the literature of arguments to the effect that we should accept a child could have a number of different parents, and not just the traditional biological mother and father³⁰. This tactic appeals to a conception of non-exclusive parenthood that although widely supported is by no means universally accepted. Callahan, for example, sees fatherhood (and we assume parenthood) as essentially a biological relation.

She then argues that what makes the idea of a child having many parents problematic is the false assumption that parental obligations are lifelong and inalienable. The idea is simply that being a parent does not entail lifelong and inalienable obligations, and that parental obligations might only be placed on those best able to bring up the child, which will often be the biological (or at least the intentional parents). Thus, the obligations that a sperm donor and a clinician have to the child can be transferred to the recipient parents.

³⁰ Fuscaldo cites, among others, Bartlett; Murray & Knaebnick; and Fuscaldo. I would add Sheldon to that list, along with my own data which will be presented in section four (Bartlett 1984;Fuscaldo 2003;Murray & Kaebnick 2003;Sheldon 2005).

This solution is problematic for a number of reasons. Fuscaldo clearly, and in somewhat of a contradiction, states that no one is suggesting that clinicians *have* duties towards the children they help to bring about. However, IVF clinicians clearly fall into the category of people whose actions reasonably and foreseeably brought about the child. If they are not to be thought of as having parental obligations then some morally relevant difference must be found between begetters and IVF clinicians that accounts for moral accountability entailing parental obligations in the former but not the latter. However, seeing as the only basis for PO offered is reasonably foreseeable causation, this option does not seem to be available to her. However, it does not seem implausible to suggest that clinicians do have some responsibilities by virtue of their causal role. In fact, section 13.5 of the *Human Fertilisation and Embryology Act 1990* stipulates that clinicians do have a responsibility to consider the welfare the child that will be born. Fuscaldo's main mistake seems to be in assuming that these responsibilities would be *parental* responsibilities, rather than simply professional duties or duties of common decency.

Rather than make this argument, Fuscaldo claims that we have no reason to think that all parental obligations are inalienable. It may well be the case that many parties share parental responsibility for a child, but, according to Fuscaldo, some of these parties can transfer their responsibility to others. Aside from the objections to full transferability that would come from Callahan

(see above), the problem with this kind of account becomes apparent when none of the parties involved wish to take on the sum responsibility. If parental responsibility is legitimately transferable for one casual parent, then it must be legitimately transferable for all of them, which means that responsibility for a child is not something that somebody *has* to take on but, rather, something that somebody can choose to accept by not transferring it. This means that there is no place for the 'buck to stop'; there is no-one who cannot get out of their parental responsibility by saying 'well, I'm going to transfer it'. One of the causal agents cannot be singularly picked out as being ultimately responsible because if there is a morally relevant difference between, say, the begetters and the clinicians that justifies the former's responsibility being inalienable and the latter's not, this inalienable responsibility must have come from something other than 'reasonable foreseeability'. In that case, it is this unknown 'other' that is doing all the work, and not the 'reasonable and foreseeable consequence' condition.

This is still a problem even if Fuscaldo is happy to hold that the generation of causal moral responsibility for a child does not entail the responsibility to be its parent, but merely the responsibility to ensure that someone else is (e.g. the responsibility to ensure that the child is taken in by an orphanage or is adopted). This would mean that causally generated responsibility would entail a responsibility to transfer responsibility elsewhere – which is not completely implausible. It may well make sense that the minimal obligation a causal agent has is to ensure that the child is looked after by *someone*. This would imply that responsibility can be transferred both badly and well. To do it well

might involve a causal parent sourcing out good prospective parents and handing the child over to them, and to do it badly might involve leaving the child on the doorstep of an orphanage. This idea seems similar to Benatar's suggestion, which has already been mentioned above, that sperm donors do have responsibilities, but that these can be transferred. Often, he says, they are transferred too lightly, and this constitutes a moral wrong, but when given due consideration they can be transferred well.

All of this seems relatively unproblematic, but it does not really help Fuscaldo, who still has to be able to pick out which causal agent, among the many, has the responsibility to *transfer*. The minimal responsibility to transfer would be equally incumbent upon all causal agents, and the problem of who, finally, has to discharge this responsibility is exactly the same as the problem discussed above in relation to the responsibility to be a parent.

In essence, Fuscaldo is unable to justify the imposition of any hierarchy of causal parents/agents, and is not able to distinguish between any of the parties who bear parental (or other) obligations without introducing another factor, which would in turn render her 'foreseeable parenthood' account null and void. This, of course, is only a problem for Fuscaldo if she indeed wants to distinguish between parents, or wants to be able to stop all of the 'parents' walking away from a child should they want to. Given that this is something that concerns me, and something I would want to be able to do in an account of fatherhood, this give me sufficient reason to reject Fuscaldo's theory –

although someone who did not share this requirement would have no reason to do so.

Chapter 7 - Social accounts

I have so far examined accounts that try to ground PRE in genetics, causation and intention. None of these have been rejected outright, although it has been shown that whether or not they are accepted or rejected will to a large extent depend upon our willingness to reject or maintain other, more deeply rooted, moral convictions and concepts. An alternative option is to try to ground PRE in social relations, and to this end we shall now examine 'welfare' and 'custody' accounts

Locke and welfare

Welfare accounts find their clearest expression in the political writings of John Locke, which focus on the responsibility of fatherhood and grounds paternal 'power' in the need, or welfare, of the child. We have already seen how some accounts appeal to Lockean notions of property rights in order to justify a father's rights over his children, and we have also examined reasons to reject these accounts. It is interesting, then, that Locke does not base his theory of paternal rights (or power) upon the property rights of fathers over their children but, rather, argued that a father's power over his children is justified solely in order to look after the child until the child can look after itself. For Locke, the rights of parents arise only out of "that duty which is incumbent on them to take care of their offspring during the imperfect state of childhood", and furthermore "[t]o inform the [child's] mind, and govern the actions of their

yet ignorant nonage³¹, till reason shall take it's place, and ease them out of that trouble, is what the children want, and the parents are bound to" (Locke 2003a) S.58. Locke, then, characterises fatherhood (and motherhood) as a state that exists in order to raise a child to the point at which it can look after itself. In other words, fatherhood exists for the sake of children.

Locke's theory of paternal power must be understood within the context of his, then, radical opposition to the patriarchal family, in which he argues against contemporary 'patriarchists' (typically, Filmer (Filmer 1991)) who viewed the father as the natural head, by right, of the family, holding absolute power over its members. Far from a being a 'natural' right, Locke argues that paternal power is like a power of guardianship, such that "when he quits his care, he loses his power over [the child]" (Locke 2003a) S.65. As Foster notes, paternal power was, for Locke, conditional (Foster 1994), and Locke's account of PRI sees paternal rights arising as a necessary tool for the discharge of the responsibility (PO) to look after one's children, and it sees this responsibility arising as a consequence of the child's need to be looked after. The explicit purpose of paternal power for Locke is to benefit children, and Eekelaar points out that the notion that it could only be exercised in their interest "*was a persistent theme of enlightenment writers such as Rousseau, Diderot, and Priestly*" (Eekelaar 2003) p111, and links this to the rise of a welfarist ideology which saw rights and powers as only legitimately exercised in the interests, or at least not against the interest, of others.

³¹ 'Nonage' is a rarely used term nowadays, meaning either the period of time before a child reaches the age of maturity, or any period of immaturity.

Like Engelhardt, Locke believed that children come into this world lacking rational capacity and without the ability to look after themselves or contribute to society, but rather than drawing from this the conclusion that children are not full moral persons and can be the property of their parents, he instead concludes that children are imperfect persons, whom fathers (and mothers) are obliged to 'preserve, nourish and educate' until such time as they are able to care for themselves. In support of this, he appeals to a natural law such that men have a natural desire to care for their offspring, which places a binding natural duty on them to do so. However, Locke was acutely aware that not all men have this natural desire. The example Locke uses is a cannibalistic Peruvian tribe, which he claims breeds children simply to eat them at public festivals³²; but a relevant modern example would simply be the prevalence of men who walk out on their progeny and are unwilling to take care of them or support them financially (see Section One). His answer to this, according to Foster, was to appeal to a more fundamental natural law, which is the desire for self-preservation, whereby, eerily pre-empting neo-Darwinian evolutionary psychology, men are driven to care for their children as a means of continuing themselves. Foster goes on to comment:

By interpreting the concern for children in terms of the strongest and most stable human desire, that of self-preservation, Locke provides the basis for a relatively lasting connection between

³² See his *First Treatise of Government* (Locke 2003b) S.57, and also his *Essay Concerning Human Understanding*, (Locke 1998) I(iii)12.

fathers and their children without giving their fathers the great powers patriarchy thought necessary. (Foster 1994) p662

This answer seems to anticipate neo-Darwinian notions of genetic survival, popularised by writers such as Dawkins and Wright although, not surprisingly, it is not characterised in those terms (Dawkins 1976;Wright 1996). It grounds a father's responsibility in two motivating factors. The first is the natural law that drives men to care for the well being of their children, which exists because the child needs it; and the second is the natural desire to preserve oneself through one's children.

The most pressing difficulty with this Lockean welfarist account is not the liberal ideology on which it is based (which, as we have already seen, seems enshrined in current Western moral ideology), but upon the difficulty it has in denoting any particular person to whom responsibility, and thereafter rights, should be given. The argument bases a father's responsibility on the need of the child. Upon recognising that a child is in need of care, a father, in virtue of a binding law of nature, is obliged to provide that care. However, we are given no indication as to whether this law of nature is binding only to the genetic father, or whether it is binding to others also. One would think that such a law of nature would apply to everyone, and thus any person, in finding a child in need of care, would be bound by that law of nature to take the child into their home and raise it. On such an account, I am equally responsible for raising your child as you, and vice versa. Whilst there is certainly something to be said for a collective social responsibility for our children, it seems highly

unreasonable to suggest that my responsibility for a child I pass in the street is equal to that of my responsibility for my own child. The need of the child invokes a responsibility upon somebody, and leaves the question of whom that somebody is unanswered. It suffers from the same deficiency as Fuscaldo's causal account in that it identifies a plausible source of moral responsibility, but runs into problems when asked to whom that responsibility belongs.

For Locke himself, this would probably not have been a problem. His discussion of paternal power and responsibility seems to be limited to the nuclear, biological family. He takes for granted that a 'father' is a 'begetter', and he speaks of parents and their 'offspring', which, in his day, certainly implied an assumed genetic connection. Furthermore, his appeal to man's desire for self-preservation only makes sense in the context of procreation, and this motivating factor would not, arguably, apply in cases of non-biological fatherhood. We begin to see, then, that although Locke's welfare theory grounds paternal responsibility in the need of the child, it also implies that this need only invokes a binding responsibility upon the biological father, and we find that we are lapsing back into a genetic account, albeit modified by a welfarist account of PO. The responsibility is not itself generated by the genetic connection (either as property or a causal relation), but it does act as an identifier, for which we need a further explanation. This explanation could not, for Locke, appeal to property rights as it was exactly this kind of notion to which he was objecting (Archard 1993;Dunn 1995;Foster 1994). The only

other option he could plausibly take would be a genetic causal argument, which we have already discussed and will not be re-examined here.

Another problem with a welfare account has been raised by Schoeman, who asks what parent's rights would amount to, on a welfare account, if it turned out that a child would benefit more from being brought by up by another person (Schoeman 1980). To this rhetorical question we might answer 'not much', for if PRE is based on the welfare of the child, then any person or system better placed to look after a child than its current custodian should automatically become its parent. This does not simply mean that a competent parent should acquire rights in the stead an incompetent parent, but also that superior parents should gain rights in the stead of adequate parents, and that perfect parents should acquire rights in the stead of superior parents. There is something intuitively plausible about giving rights to those parents who will give a child the best possible upbringing, but there is also something obviously counterintuitive about taking a child away from adequate parents simply because someone else could do the job better. And yet, the logical extension of a welfare account would require us to do just that. Of course, practical considerations about child welfare would certainly impact on this, and it would rarely be in the child's interest to be moved from family to family as soon as a set of more capable parents came along - unless the child was actually being harmed where it was. Given this, the interests of the child might normally trump the obligation on the part of a more capable parent to try to exercise parental responsibility.

Arguments from custody

Arguments from custody may be an amalgamation of causal and intentional accounts, with 'sweat equity'³³ also thrown into the bargain. The argument would proceed along the lines that the man who has custody of a child, whether biologically related or not, is causally responsible for the child's continued existence, and clearly intends to be a parent. Furthermore, by putting in the effort and commitment to raising a child he has earned the right to be considered a father (by sweat equity). All things considered, any man in this kind of position seems to be well placed to make a claim to fatherhood. It is exactly this kind of custodial argument, as Bayne and Kolers have pointed out (Bayne & Kolers 2003), that enables us to think of adoptive parents as 'parents', and they claim that this gives us good reason to think that custodial parents should be included in any theory of parenthood.

What we must be careful of here is making a 'ten leaky buckets' argument. This is an argumentative fallacy, by which a number of weaker arguments are presented in the hope that, together, they will make one strong argument (Hope, Savulescu, & Hendrick 2003) p21, and this, I fear, is exactly what the argument from custody does. Independently, as we have seen, causal and intentional arguments are problematic, and simply putting them together does not make them any less problematic. This places all the work on the sweat equity argument, which, as we shall now see, has problems of its own.

³³ 'Sweat equity' is a term most commonly used to describe un-reimbursed labour on a property, through which a person earns a stake in that property. In this context, it refers to a person who earns a stake (or a right) in a child, as its parent, by investing labour in that child.

Sweat equity

The sweat equity argument tends to be given in support of gestational accounts of motherhood, claiming that the labour invested in pregnancy earns the mother the right to be recognised as having a certain status and certain rights (Moody-Adams 1991; Narayan 1999). Comparative arguments can easily be drawn for fatherhood, where one could argue that the support a man gives to the pregnant women, and then the labour he puts into raising the child once it is born, could earn him PRE. Laqueur seems to be making an argument of this kind when he suggests that paternal status is earned by investing emotionally in a child (Laqueur 1996) and this, at least, seems plausible, and makes sense of how a man might become a 'prenatal father', despite his not being able to labour physically for a child until it is born. However, as Bayne and Kolers have noted, the theory runs into problems because whilst it is able to generate *rights* for a parent, it cannot generate responsibilities, and we find that there is no obligation for any man to invest his labour in a child (Bayne & Kolers 2003). This is a problem if and only if such an obligation is necessary, but it seems difficult to understand how a man could have rights as a father without having any paternal obligations. We might, here, invoke a Lockean welfare account, but we are still left with the problem of saying why any man should take on responsibility for any child in the first place. The sweat equity argument can only explain how rights are earned once responsibility is accepted, but it cannot explain how responsibilities are generated. Clearly, it is plausible that once PRI is generated PO may follow. Once a man begins to act like a father to a child,

sufficient to earn the rights of a father through sweat equity, then he creates in that child an expectation that the care will continue. In light of that expectation he has created, as Kaebnick suggests, he is obliged to continue as the child's father (Kaebnick 2004). The problem with this is similar to the problem faced by an intentional account. Sweat equity shows how obligatory responsibilities could follow on from the voluntary acceptance of responsibility (or intention to be responsible), but it cannot account for any kind of responsibility that might exist regardless of voluntary acceptance (or the intention to be responsible). If we want to think, as I do, that a man might come to be responsible for a child even though he does not wish to accept responsibility, then the sweat equity argument is not sufficient. Only if one is happy to accept that no paternal obligation is obligatory (in the sense that it cannot be acquired non-voluntarily) will the sweat equity argument seem palatable. In light of this, for me, the sweat equity argument can do little to add strength to the already problematic causal and intentional arguments, and far from three leaky buckets coming together to make one leak free bucket, all we have in the argument from custody is a big bucket with lots of holes.

Summary

So far in this section we have examined various theories that try to explain and justify PRE. We have looked at genetic, causal, and social accounts and we have found problems with each. The problem has not been that the theories themselves are clearly wrong - there is in fact something intuitively correct about most of them, and most make use of moral principles which are

in themselves acceptable. However, each one also fails to accommodate other intuitions, and is problematised by *reductio ad absurdum*.

An alternative approach has been offered by Bayne and Kolers, who seek to treat fatherhood as a pluralistic concept. Their strategy has been to examine various accounts and find them problematic, much as I have done here, but then argue that whilst no existing accounts provide necessary grounds for fatherhood, many of them provide sufficient grounds. It is this idea that this section will, finally, address.

Chapter 8 - Pluralistic solutions and a way forward?

Pluralistic solutions?

Bayne and Kolers have argued that whilst no one theory is able to provide *necessary* grounds for PRE, many are able to provide *sufficient* grounds (Bayne & Kolers 2003). They challenge *monistic* views, on which one feature is considered necessary and sufficient for parenthood; and they challenge *necessity* views, on which some feature is necessary but not sufficient. They conclude, much as I have done, that no one account seems to cover all aspects of fatherhood, but they do not consider this a failing of the theories. Rather, they conclude that it simply reflects the complexity of fatherhood, and that across all the accounts they examine is a correct, if inchoate, underlying assumption that “being causally implicated in the creation of a child is the key basis for being its parent” p241. Thus, a genetic connection (rooted in causation), extended custody and intention (also both rooted in causation), can all be individually sufficient for the grounding of fatherhood. On this basis, they suggest that any account of fatherhood (or parenthood) ought to be “broad enough to grant parenthood to genetic, gestational, custodial and intentional parents” p241.

Pluralism offers us an attractive solution to the problems created by monistic and necessity accounts, as it enables us to accommodate intuitions that fatherhood is a malleable concept, and that PO and PRI can be attained in a number of different ways. Rather than having a fixed source, a pluralistic

account allows us to acknowledge that PO and PRI can sometimes be acquired by progenation, sometimes by intention, and sometimes through having physical custody. This allows us to accept adoptive ‘fathers’ as fathers, eliminate sperm donors and include recipient fathers. It allows us to hold progenitors responsible when appropriate and to absolve them where necessary. However, this flexibility is also pluralism’s biggest weakness.

Firstly, the account offered by Bayne and Kolers is really only a pluralistic *causal* account. They see intention, progenation and custody all as causal roles, which play a part in either bringing a child into existence or maintaining a healthy, live child. What the account amounts to is that any man who is causally responsible for either bringing a child into existence or maintaining the existence of a child counts as a father. The account is, then, a monistic causal account, which nonetheless allows scope for different kinds of causation. This is not an objection in itself, but it is noteworthy because it indicates that the account is not as flexible and all embracing as it first appears. As a causal account, it runs in to the same problems as the causal accounts we have discussed above, but it purports to overcome these problems by combining them all together, and allowing all of the causal roles a place at the table. This leads us to the second, and most trenchant, problem for this account,

Pluralism offers no help in deciding how to rank the different kinds of causal roles. Cases may arise in which both a progenitor and a custodian compete for PRI and PO, and in such a case the pluralistic account gives us no

normative guidance as to how to choose between them. The simple, and to some extent evasive, answer they give to this problem is similar to that offered by Fuscaldo in her response to the ‘too many parents’ problem (see above). They simply accept the implication that a child might have a number of fathers (parents), and claim that this is not a problem – and this is, as we have already seen, an issue the resolution of which will depend upon ones beliefs about what parenthood *is*.

The point is that whilst pluralism’s flexibility and inclusiveness is conceptually inviting, it is precisely because it is so flexible that it is unable to function as a normative theory. It cannot help us to make decisions in difficult cases - but this is exactly what I want a theory to do. What the pluralistic theory does is to describe the feeling that fatherhood is not a monistically grounded concept and gives voice to the feeling that monistic theories fail to accommodate all the complexities of fathering and fatherhood; but it is also vacuous because in doing so it loses normative power and fails to function adequately as an action guiding theory, but rather describes what we already feel. It will not help us to decide, if we have to, who should win a custody battle, because we have no way of ranking the different kinds of legitimate parents. This would not be a problem if it were possible for parenting to be shared by all parties, but given the acrimony that is often present in such circumstances this would rarely be practicable.

A way forward?

Philosophically, we seem to have come to an impasse. We have examined various theories that try to ground PRE in various kinds of action and/or relationships, and we have found that none of them are able to provide a satisfactory account because they can be, and often are, rejected on the grounds that they challenge some deep rooted moral conviction that 'we' are unwilling to let go of. In essence, all of the theories that have been examined have been subjected to a *reductio*, wherein it is argued that C is a consequence of accepting theory T. However, C is contrary to what would normally be considered morally acceptable or requires the acceptance of some concept that is not generalisable, and so T is challenged (or at least considered problematic). Although, as I have pointed out already, this technique is fundamentally question begging insofar it relies the assumption that certain moral principles or conceptual formulations are correct, I have also suggested that this is, in a very real way, unavoidable.

This claim is supported elsewhere, notably by Rachels in a very insightful article entitled *Moral Philosophy as a Subversive Activity* (Rachels 1997). In this article he claims that "we can never justify all our assumptions, not even "in principle" p7. He goes on to say:

This is a feature not merely of moral reasoning but of reasoning in general. In moral philosophy, though, it means that we must ultimately begin with some conception of what is morally important, which is itself taken for granted... [N]o one can escape reliance on

some starting point, which is insulated from challenge by its very place in the scheme of reasoning. p7

Given this, and if we accept that this kind of intuitive assumption has a role to play in our reasoning, then we have to decide what kind of role it can, and should play. It has been shown in the preceding discussion that it is often used, in the literature on the philosophy of fatherhood, both to construct a theory and to argue against it. However, this is done in rather an *ad hoc* way. One philosopher constructs his or her theory on the basis of their own (or what they assume to be 'our') moral intuitions, and then the same theory is challenged on the basis that it contravenes some other moral intuition held dear by another. This has been the nature of moral debate for a long time, and I suggest now that perhaps it is not very productive. This is particularly the case if philosophers want their work to impact upon policy and to be useful in any practical sense, because it seems unlikely that policy or practice could be influenced by what is essentially the opinion of a single philosopher.

In short, if philosophers wish their theories to be practically useful and generally applicable, then they have to be based upon principles that are, generally, shared by the kinds of people who will apply it. Given that a theory is often rejected on the grounds of not being in tune with these principles (or with the principles of a particular critic), it makes just as much sense to build a specific theory *working up* from those general principles – thus ensuring that it *is* in tune. This bottom up approach would simply anticipate the *reductio* objections, and work from the start with principles that are not contrary to

people's deep-rooted moral convictions. If this much is accepted, and I shall from now on labour under the assumption that it is, the next big question is how these principles can be identified.

Jackson notes that Beauchamp and Childress' attempt to produce a theory of medical ethics that is practically useful was based on an idea like this (Jackson 2006). Their method of choosing their four principles was to look at existing ethical theories and take away what was common to them. (Beauchamp & Childress 2001). Although this theory has been widely criticised (Cowley 2005; Gillon 2003; Harris 2003), this is predominantly due to problems in its application and general accusations of being so general as to be vacuous, rather than criticism of its methodology. However, to do the same here would be nigh on impossible, because there is simply not enough common ground across the available theories. One further problem with taking this particular approach is that the theories themselves were generated by only a small collection of individuals who are arguably not going to be representative of the people who will be appealing to the theory in practice. It is one thing for philosophers to agree on what principles should be used as a base for a theory, but unless these principles are acceptable to the people who will hopefully be applying it, we may as well not have bothered.

Other philosophers seem to have already recognised this. Rawls' *Theory of Justice* requires us to imagine everybody sitting behind a veil of ignorance and choosing those principles that would be acceptable to us all, regardless of social status (Rawls 1999). As we are rational creatures we would, Rawls

hypotheses, choose those principles that would promote justice and fairness to all. Elsewhere, Dworkin makes use of a similar idea in his concept of 'prudent insurance' (Dworkin 2000), in which he suggests that in order to make decisions about the just allocation of medical resources we should perform a thought experiment in which we suppose that everyone has access to ideal circumstances and is ideally prudent, and ask 'what choices would these people make'. We should then, he argues, base a theory of resource allocation on those decisions made in the idealised alternative world. Whilst both of these philosophers attempt to appeal to what people would actually do or choose, and thus make use of the intuitions and convictions of the people who might make use of their theories, they both do this by asking the philosopher to conduct a thought experiment and decide what they think people would want. Although from my perspective this is certainly a step in the right direction, it does not go quite far enough, and I am led to ask the question: *why hypothesise about the moral concepts that people use, about what they value, and about the intuitions that they rely on to test possible courses of action, when we can just ask them?*

To this end, my approach has been to conduct empirical research examining the values, concepts and intuitions that men use and rely on in the course of their moral reasoning, in an attempt to uncover, if they exist, those basic, common, shared normative principles that motivate and underpin their moral decision making with regards to fatherhood. I have then aimed to use these principles to inform the construction of a normative framework for the acquisition of paternal rights and responsibilities that is sensitive to these

concepts and intuitions. Such a framework would, of course, have to be logically consistent, fit for purpose, empirically plausible and conceptually encompassing – in short it would have to comply with the constraints spelled out at the start of this section, and it would be built from the bottom up, rather than from the top down.

The limitations of such an approach are also clear. Given that I look only at men, I can only say of any framework that is produced that it is in line with what men think. Further, I could not generalise to *all* men, but only to those men that were involved in the research. However, this is acceptable so long as I do not claim that the framework produced can be generalisable or that it can or should be universally binding. What it is, is a start. It is step in what I think is the right direction, and given that the method seems to work (as I will go on to show), then perhaps further empirical research could be done along the same vein, that will enable the theory to be generalised to most men, perhaps men women and children or even the UK – but this is far in the future. For now, this project will increase our understanding of the way men think about fatherhood as a normative concept, empirically test those concepts and intuitions that philosophers in this area have come to rely on, and produce a framework of PRE that is more than a just personal confession.

Section three – The Empirical Project

Introduction

The aim of the empirical project was to explore men's moral perspectives on how paternal rights and responsibilities are generated. The corresponding objectives were to explore and assess the relative weight men give to genetic connectedness, social relationships, and intention in deciding how to allocate paternal rights and responsibilities; and to explore the men's moral reasoning in terms of how they support and defend their opinions and moral perspectives.

The methodology chosen should be suitable for answering the question(s) being asked, and qualitative methods are most appropriate for studies that are exploring new areas and looking to uncover meanings and explanations (Silverman 2004a). A variety of qualitative methods are available, and the specific method of data collection should also be driven by the research question. As Mason notes, thinking strategically about what kinds of questions are being asked and formulating a methodological approach that is suitable for answering those questions is pivotal (Mason 2002).

The particular empirical aims of this project were to discover men's views about the meaning of fatherhood and the origin of paternal rights and responsibilities, and in particular to uncover the reasons behind these views and explore the justifications given in support of them. The particular emphasis lay in assessing the moral significance of the genetic connection

within the father child relationship, and what role genetics, circumstance of conception and existing social relationships should play in defining paternal relationships. The research, then, was exploratory; it was looking to explore meanings, concepts, reasons and motivations, and therefore required a methodology that was structured enough to maintain a focus on the research area, but flexible enough to allow the data to be participant led and encourage participants to disclose normally private or hitherto unarticulated thoughts and feelings, and for this, focus groups are appropriate (Morgan & Krueger 1993).

Focus groups are particularly suitable for projects in which researchers aim to discover how participants think and feel (Krueger & Casey 2000), and for exploring people's experiences, opinions, wishes and concerns (Kitzinger & Barbour 1999). Participants are more likely to disclose when they feel they are amongst people to whom they are alike in some way (Jourard 1964), and focus groups are able to create such an environment. They thus have an advantage over methodologies that involve interaction with only a researcher or a questionnaire insofar as focus groups can be formed homogeneously, creating an environment in which participants share certain experiences and therefore are more likely to feel comfortable enough to disclose. Focus groups are also appropriate when investigating complex behaviour and motivations, and are particularly suited to investigations in which researchers aim to learn more about the range of opinions and experiences that people have (Morgan & Krueger 1993). The dynamic nature of a focus group means that participants are constantly interacting and exchanging viewpoints, influencing, and being influenced by, the input of others. This interaction

enables the researcher to examine motivations and reasons “with a degree of complexity that is typically not available with other methods” (Morgan & Krueger 1993) p16. Focus groups are also particularly suited to accessing the ‘rich texture’ of normative influences on our attitudes and behaviours (Bloor et al. 2001), which makes them suited to the aims of this project.

The disadvantages of focus groups include the possibility of the discussion being taken over, and thus the findings skewed, by one dominant member; the possibility that member’s disclosure may be affected by the presence of others; and, related to both these points, that members may feel pressured into disclosing the thoughts they think they should have, rather than the thoughts they do have, for fear of not fitting in to the ‘group view’. These potential problems, however, must be balanced against the benefits of focus groups, and with careful and reflective facilitation it is possible to minimise these risks. I made a point of telling all participants at the start that I wanted to hear what they really thought, and not what they thought they should say. I made a continual effort to ensure that all members were included and that particularly powerful personalities did not dominate the discussions. I also closely monitored the participant’s facial expressions and body language. If it looked as though someone was uncomfortable with what was being said, but not saying so, I would intervene and play devil’s advocate by putting forward an alternative view. This often gave participants the opening they needed to disagree with an emerging dominant view, and did so in a way that did not force them to go out on a limb.

Chapter 9 – Sampling, Recruitment and Participants

Sampling

Purposive sampling is appropriate for focus group studies because it allows the formation of homogenous groups (which facilitates discussion and disclosure, see above) and enables the researcher to make useful comparisons between groups (Morgan 1997). This kind of sampling is also appropriate where researchers are looking to explore a particular issue with a particular group of people who have access to key experiences and knowledge that are relevant to the research topic (Mays & Pope 1995). Another practical advantage was that by targeting recruitment on particular groups who had a personal interest in the issues, the likelihood of successfully recruiting men into the groups would be increased.

Given these theoretical concerns, six categories of ‘experience’ were identified which were considered likely to bear directly upon men’s views on the research topic. It was considered desirable to gather a wide range of views and perspectives, and these six categories (see fig. 2) were felt to cover as broad a spectrum as possible.

Resident, active fathers (FGA)	It was felt that resident, active fathers would give us the perspective of the ‘standard’ father.
Non-resident, separated fathers (FGS)	This group was felt to give us the perspective of men to whom father’s rights have become an issue.
Men who have donated sperm (FGD)	This was felt to give us the perspective of men who, <i>ex hypothesi</i> , would not consider the genetic connection important to fatherhood as they have given their sperm away, for someone else to create children with.
Men who have had frozen embryos as a result of IVF treatment (FGE)	This was felt to give us the perspective of men who have gone to great lengths to have genetically related children, and so, <i>ex hypothesi</i> , would value the genetic connection.
Men who have experienced	This was felt to give us the perspective of men who have

a pregnancy that that was (initially) unwelcome or unwanted, by either party, regardless of the result (FGP)	experienced the difficulty of either having a child that was unwanted by him, or losing a (potential) child that was wanted by him. Father's rights, and the relative rights of men and women, would thus have become an issue for these men.
Teenage boys aged between 16-19 (FGT)	This was felt to give us the perspective of men/teenagers who might be able to both see the issues from the perspective of being a child with a father, and from the perspective of perhaps one day being a father themselves

Figure 2. Purposive sampling categories

This sampling was not aimed at achieving a statistically representative set of participants (Pope, Ziebland, & Mays 2000), but at eliciting a wide range of responses and generating a 'snapshot' of the variety of views and perspectives that men might hold. Whilst the categories identified certainly allowed for a wide range of experiences and perspectives to be included, there are undoubtedly groups of men who have been missed out. A group specifically comprised of teenage fathers would have added an extra dimension to the study, as would distinct groups of resident and active 'biological' and 'step' fathers (or fathers by adoption). Whilst neither of these groups were actively sought, they were not excluded either, and thus some of the active resident father's recruited were step fathers (although none of the teenagers identified themselves as fathers). Many groups, in fact, contained men who had had a variety of fathering experiences, and where men qualified to take part in more than one of the groups they were given the option to choose which group they felt most suited to. For example, one man who was a non-resident father, insofar as he had custody of his child 50% of the time, placed himself in the resident fathers group. Another man who had a similar domestic situation placed himself in the non-resident fathers group. Many other men had had a number of experiences which meant they could have been placed in a number of the groups. Allowing them to self-select into the

group they felt was most appropriate gave them the opportunity to join whatever group they would feel most comfortable in. It was important that they did this, rather than have a group imposed upon them. To do so would have involved categorising the men in a way that might have affected their disclosure.

Potential participants were excluded on the basis of (a) not being male (b) not falling into any of the categories (c) not having a sufficient standard of conversational English to take part in a group discussion. Potential participants were also excluded on a more *ad hoc* basis if I felt I had reason to think that they did not understand what was being asked of them or if I had reason to question their motivation for taking part, though very few men were excluded on these latter grounds. One man I excluded definitely wanted to take part, but despite my telling him repeatedly that there was no payment on offer he still seemed to think that he would be paid. He kept trying to haggle with me over price, even after agreeing that he understood there was no payment. Another man was excluded because despite saying that he understood what the project was about, when asked what his role in the research would be he could not say. Another man was excluded because, after talking to him, I felt that he wanted to take part because he had an anti-women agenda to push. Although his views would have been valuable to the study, it was clear to me that he wanted to take part because he thought this research would directly influence policy, and furthermore that he wanted to influence the research in order to influence policy. This suggested both that he did not understand the relationship between academic research and policy,

and that his presence in a focus group may have been overly dominating and pressuring.

Recruitment

A total of 52 participants were recruited, using a number of different strategies. Due to the purposive nature of the sampling it was clear that different strategies would have to be employed for different groups, and certain groups would have to be specifically targeted whilst others could be recruited through more general means. As such, a number of strategies were employed, with varying degrees of success. Figure 3 shows the numbers of participants recruited by the various methods.

<i>Recruitment method</i>	FGA n=	FGS n=	FGT n=	FGD n=	FGE n=	FGP n=	Total n=
Media coverage	2	4	-	1	-	1	8
Clinical recruitment	-	-	-	-	2	-	2
Schools	-	-	13	-	-	-	13
Advocacy/Support groups	1	5	-	-	1	2	9
Snowballing/word of mouth	6	-	-	3	-	1	10
Advertisements	-	-	-	3	5	2	10
Total n=	9	9	13	7	8	6	52

Figure 3. Recruitment figures. n = number of men recruited.

All participants recruited were self selected volunteers. Whilst some were approached directly through third parties, all participants contacted me on their own initiative. Once initial contact had been made, the project was explained to them and they were given a participant information sheet to read through. They were then asked to contact me again if they wished to take

part in the project, at which time personal and contact details were recorded in a secure database.

No ethics approval was required for this study by the University of Birmingham for the non NHS participants, although participants who were under eighteen years old were identified as being potentially vulnerable. To combat this, we decided to recruit through schools, allowing teachers to act as gatekeepers to their students. Although teenagers over the age of sixteen can consent to take part themselves, it was felt that this additional safeguard would be prudent.

- **Media coverage**

The first strategy used was to contact the media and use this as a medium for reaching potentially interested parties. My supervisor and I liaised with the Press Office at the University of Birmingham to develop a press release, which was then posted on the University website and sent out to local and national newspapers, TV and radio. Given its topical nature there was a great deal of media interest, though most of this was directed at the results of the study. The story was taken up and featured in a local newspaper (Collins 2005), and on local BBC Radio WM. In addition to this, stories about the research were run by the University of Birmingham newsletter and the student newspaper (Jones 2006b). In all, eight participants were successfully recruited using this method.

- **Clinical recruitment**

Recruiting for the FGD and FGE groups was identified as potentially problematic in the early planning stages, and collaboration was sought with a local NHS fertility clinic to help with recruitment. Once LREC and hospital R&D approval had been gained (see appendix 1), I went into the clinic under an honorary contract and was given access to patient files, from which I selected those patients who met the criteria of having had embryos frozen as a part of IVF treatment. This selection was then checked by the department research manager, and a number of potential participants were removed on ethical grounds. It was thought that the following kinds of patient should be excluded:

- Patients who have not had a successful IVF cycle
- Patients who are currently making a decision about what to do with their frozen embryos.
- Men who had used, or were considering using, donor sperm.

In each of these cases, the research manager felt that the issues being discussed in the groups would be too raw, emotionally draining, and would cause undue stress. As such he acted as gatekeeper to the research population and protector of those people he identified as being vulnerable.

This left a total of 32 men who could be contacted. Initial contact was made by the clinic in the form of a letter asking if the men would be willing to be contacted about some research. With this letter was a prepaid envelope and

a response card. When a positive response was received by the clinic, a further letter from the clinic, along with a letter from myself, was sent out which explained the aims of the research and asked the men who were still interested to contact me directly. This system ensured that no men would be identified to me unless they first identified themselves through either a phone call or a response form. The same process was used to recruit sperm donors through the clinic.

This recruitment method was particularly unsuccessful, and was certainly the least efficient, being very labour intensive and relatively ineffective. No sperm donors were recruited through the clinic, although this was almost certainly affected by the nationwide drop in men donating sperm after the removal of donor anonymity in April 2005. Out of five initial response cards received, two participants were successfully recruited into the frozen embryo groups.

An identical process to this was also set up at a local BPAS clinic, through which the FGP groups were specifically targeted, although this was equally unsuccessful. Ninety initial letters were given out by three different clinics in the West Midlands. Of these ninety, only one man showed an interest, and then chose not to take part.

Similar collaboration was sought with various private hospitals both locally and nationally, but this bore no fruit. In speaking to one London clinic, it became apparent that concerns over the shortage of sperm donors following the removal of donor anonymity in April 2005 had made them more cautious

about facilitating access to their donors; cautious, indeed, about anything that might cause men to rethink their position as donors.

- **Schools**

Teenage boys were recruited through schools, as this was considered the safest and most effective way of accessing that age group. In all, 10 schools were contacted both locally and nationally, and on a *quid pro quo* basis I offered to go into the schools and give a talk on science, medicine and ethics, careers in research, or life at university, in return for their help. Of these schools, two responded to letters sent to them, and for practical reasons only one of those two ended up taking part. The second teenage group was recruited through a science teacher whom I met at a *Researchers in Residence* 'Express Yourself' conference in September 2006. I mentioned to her that I was trying to recruit teenage boys to take part in a focus group, and she was keen to see if any of her pupils wished to take part. She went away and recruited a group for me.

All the teenage participants were recruited by the schools themselves, and they were aware of the inclusion and exclusion criteria for the study. There was a slight problem with the first group, as it contained two fifteen year olds, which was below the stated threshold age of 16. This threshold was instantiated for the purely practical purpose of gaining consent, and this then posed a problem. At the time I chose to assess them for competence myself, and then ask the head teacher to do the same. Both myself and the head teacher went through the consent form with them, and it was clear that both

participants were competent to give their consent. This judgement was made on the basis of them fulfilling conditions of Gillick (or Fraser) competence, insofar they were judged by myself and the head teacher to be mature enough to understand what participation entailed, and to assess for themselves the benefits and disadvantages (Brazier 2003). The head teacher countersigned the consent forms, and the two fifteen year olds took part in the discussion. This is an example of one of the many problems that can occur when recruitment is performed by third parties, and it certainly made me more aware, and more cautious, when the second teenage group was being recruited. A total of thirteen participants were recruited in this way.

- **Advocacy/support groups**

A number of advocacy and support groups with an interest in fathering and fatherhood were contacted and calls for volunteers were placed on websites, discussion forums and electronic mailing lists. The following groups were contacted: Acebabies; Working with Men; UKDonorlink: Families need Fathers: Fathers for Justice: Fathers Direct: National Gamete Donation Trust. Most of these organisations placed calls for volunteers on their websites or sent out electronic flyers to members, and this led to adverts being posted on private websites and chat rooms. In total, nine participants were successfully recruited using this method.

- **Snowballing**

One of my supervisors, myself, and some key participants had acquaintances, friends or partners who were able either to take part or help with recruitment. Through these people, adverts were placed in local church and society newsletters, calls were placed through local NCT networks, and friends of friends were contacted, told about the research, and invited to contact me. In all, 10 participants were successfully recruited using this method.

- **Advertisements**

Finally, advertisements were placed in a free national newspaper (Advertisement 2006a; Advertisement 2006b) for those groups for which sufficient volunteers had not been recruited (frozen embryo, unwanted pregnancy, sperm donors). Two small national adverts were run in the Metro newspaper, three days apart, calling for volunteers, inviting any interested men to contact me by text, phone or e-mail. This method was enormously successful, and generated a response that was barely manageable. Both adverts combined (placed three days apart) generated 95 responses by text, phone and e-mail, twenty of whom finally confirmed they wanted to take part. Of those twenty people, ten eventually took part, but all were willing to do so. Of the ninety-five responses, excluding the 20 who signed up, 33 people were sent more information but declined to take part. The remaining respondents either didn't want more information once I had explained the research to them over the phone; had expected payment and therefore declined to take part on discovering there was none; or misunderstood the advert and had contacted me because they wanted to donate sperm for payment. I also received two prank responses, one of which was mildly offensive.

This was by far the most successful method I tried for reaching the 'hard to reach' groups, but it was not unproblematic. It was expensive, and labour intensive. It generated prank calls, and it also led to a few misunderstandings as members of the public misread the advert and thought I was trying to buy sperm myself. I advised those men who contacted me in order to donate sperm to get in touch with their local fertility clinic or GP, and where necessary gave them the contact details of people who could give them more information. All this extra work put an extra strain on my time and resources, but overall the benefits outweighed the costs, and this method enabled me to fill the remaining groups.

The use of the mobile phone was particularly successful, and it seems plausible that giving respondents the opportunity to text their interest increased the initial response rate. Simply having a landline number or an e-mail address would have meant that interested parties would have had to wait until they got to a computer, or until they could make a phone call, before responding - and in this time the moment may have passed. By giving people the opportunity to respond to the advert immediately I believe that many people responded who otherwise would not have done. The one aspect of this strategy that I would certainly change in the future would be to have a project mobile number, so that I would not have to use my own private number for receiving text messages.

Demographic data

Demographic information was taken from all participants, with their consent, via a form they are asked to fill out at the start of each group. Information was sought concerning age, educational background, employment status and ethnicity (see appendix 2).

The research population was predominantly white, well educated and, with the obvious exception of the teenage participants, tended to be professionals. Although it was never in the remit of the study to examine differences in ethnic, economic or educational background, the bias in the sample towards white middle class professionals is obvious and important. Practical difficulties prevented purposive sampling for a wider spread of ethnic, educational and economic backgrounds. Although men from a wide variety of backgrounds contacted me, it tended to be mostly white middle class men who chose to take part. This may be for a number of reasons, ranging from communication barriers between the men and their first point of contact (which was myself, a white, middle class academic) to the simple economic fact that the men were being asked to give up what amounted to at least half a day of their time. Many men decided not to take part on hearing that there would be no payment, and others were put off by the time commitment involved. Another practical problem was that background information was not sought until after the men had decided that they would like to take part, and so purposive sampling for greater ethnic, economic and educational diversity was not possible.

Each participant was also asked to give a brief, non-identifying, explanation of why they qualified to take part in the study. This additional information was sought in order to better contextualise the data gathered. This was done because, assuming that the men's experiences might have an impact upon their views, it is important to be able to analyse those views in the context of their experiences. Given the personal nature of this information, disclosure was purely voluntary, and this meant that some participants gave more information than others, whilst some gave very little. Some information, such as the gender and age of the men's children, or the men's particular professions will not be disclosed here, as this information, combined with some quotations, may make some men identifiable. Children, of either gender, will be referred to as 'adult', 'adolescent', 'school age', or 'pre-school age'. Where information, such as the child's age group, is not stated, this is because the information was withheld by the participant. I have also refrained from specifying the educational background, ages and employment status of the individuals in each group, for fear that these, combined with some of the quotations, may lead to their anonymity being compromised.

- **Resident, active fathers**

All of the men in this group identified themselves as being resident, active fathers, although one man in group two was separated from his child's mother and had shared residency. Both groups were held in Birmingham.

The first of these groups comprised five men, four of whom identified themselves as 'white English' and one as 'black Caribbean'. Three of the men had degrees, and all were employed. The average age of this group was 36. Participant five had an adult stepchild and an adult genetically related child from a previous relationship, and participant two had an adult stepchild and one pre-school genetically related child from his current relationship. Participants one, three and four did not offer any specific information.

The second of these groups comprised four men, three of whom identified themselves as 'white English' and one as white Irish'. Two were employed, one was self-employed, and one was a stay-at-home dad, and all were educated to degree level or above. The average age for this group was 39. Participant one described himself as a stay-at-home dad to his one pre-school child. Participant two had one pre-school and one school age child, and participant 4 had three adult children. Participant three had one pre-school child, to whom he has shared access with his ex-partner. His level of access to his child led him to self-identify as a resident, active father, rather than a separated father, which is why he took part in this group.

- **Non-resident, separated fathers**

Both of these groups were made up of men who had become separated from their children, and the men had varying levels of access. Some had been through bitter divorce and custody battles and some had had amicable separations. The commonality was that all of the men had been faced with losing contact with their children against their will, and had taken steps, some

successfully and some not, to retain contact and/or custody. Both of these groups were held in Birmingham.

The first group comprised four men, three of whom identified themselves as 'white English' and one as 'black Caribbean'. Three of the men were employed, and one was full-time postgraduate student. Three of the men had degrees, and the average age was 50. Participant one was divorced, and had one pre-school child who was living with his ex-wife. Participant two was also divorced, with one adult child, with whom he has had little contact and from whom he considers himself estranged. Participant three went through an acrimonious divorce, and fought for custody of the only child of his marriage. He now enjoys 50% access to his child. Participant four also went through a difficult divorce, and fought for joint custody of his now adult child. He initially saw his child regularly but gradually began to lose contact ten years after the separation, which was eventually halted by his child. All of the men, except for participant four, also identified themselves as 'actively parenting'. Participants one and four had also experienced unwanted pregnancy.

The second of these groups comprised five men, four of whom identified themselves as 'white English, and one as 'black African'. Four of the men were employed, and one was unemployed. One of the men had a degree, and the average age of the group was 43. Participant one had a pre-school child living with his ex-partner, to whom he has restricted access. The child's mother was described as a 'radical feminist' who believed that only women should be involved in raising children. Participant two was divorced, with four

school age and adolescent children. He obtained a court order for custody of his male child/ren, but his female child/ren live with his ex-wife. Participant three was also divorced, and has a shared residence order, which means he has custody of his children 40% of the time. Participant four had two children by his partner, from whom he then separated. He had been 'back and forth' to court for a period of three years, and eventually was given access to the children 40% of the time 'in overnight stays'. Participant five has a pre-school child, of whom he has custody for twenty weeks of the year. He has no contact at all for the remaining 32 weeks. All of the men also identified themselves as 'actively parenting'.

- **Men who have donated sperm**

All the men in this group had donated sperm with the intention that their donation be used by the recipients to conceive a child. The first group was held in Birmingham, and the second in London

The first of these groups comprised four men. One man identified himself as 'white English', one as 'white Irish', and two as 'white Other' specifying 'British' and 'European' respectively. All of the men were employed, and three were educated to degree level or professional equivalent. The average age of the men in the group was 43. Participant one had donated sperm at a licensed clinic on one occasion, and did not know what had happened to his donation. Participant two had also donated at a licensed clinic, and he knew that his donations had not been used because of a fault somewhere along the line. He also had genetically related children he was actively parenting. Participant

three had donated, and was still donating, through the *mannotincluded*³⁴ website, and knew that a number of children had been conceived from his donations. He had given permission for those children to be given identifying information about him. Participant four had donated once to a lesbian couple with whom he was acquainted.

The second of these groups comprised three men, one of whom identified himself as 'white English', one as 'white other', specifying 'South African', and one as 'Asian other', specifying 'British'. All of the men were employed, two of them were educated to degree level, and the average age was 36. Participant one had donated sperm regularly as a student through a licensed clinic, and had consented for any children born from his donation to have contact information for him. Participant two had donated sperm over a number of years through the *mannontincluded* website. He also had genetically related children he was separated from, and was actively parenting. Participant three had donated a number of times at a licensed hospital clinic.

- **Men who have had frozen embryos as a result of IVF treatment**

All of the men in these groups had been through IVF treatment, and most had had embryos frozen and stored as part of the process. Some of the men had had successful cycles, and some had not. Those who had had a successful cycle also identified themselves as 'actively parenting'.

³⁴ www.mannotincluded.com is an online sperm courier service.

The first group comprised four men, three of whom identified themselves as 'white English' and one as 'white Irish'. All the men were employed, one had a degree, and the average age was 44. Participant one had already had one failed cycle, and was just embarking, with his wife, on his second. Participant two had two children, both from successful IVF cycles, and participant three had twins as result of one successful cycle. Participant four had one pre-school child from one successful cycle.

The second of these groups comprised four men, one of whom identified himself as 'white English', two as 'white other', specifying 'New-Zealander' and 'Jewish' respectively, and one as 'Asian other', specifying 'originating from Kenya'. All of the men were employed, and two of them had degrees. The average age of the group was 40. Participant one had pre-school twins as a result of a successful ICSI cycle, but had had other kinds of treatment fail previously. Participant two had one child from one IVF cycle, from which few viable embryos were actually produced, which meant that two were implanted, and none were frozen. Participant three had been through three IVF cycles, but had no success. He and his wife were considering the use of donor sperm at the time the group was held. Participant four had had three IVF cycles, and had one adolescent child as a result of one successful cycle. He and his wife had also had a naturally conceived child who was stillborn.

- **Men who have experienced a pregnancy that that was (initially) unwelcome or unwanted, by either party, regardless of the result**

All of the men in these groups had experienced a pregnancy that was either unplanned or unwanted, by either themselves or their partner. Some were also actively parenting, some were separated from their offspring, and one had also been through IVF. As such, these groups were probably the most disparate, as many different experiences came together. The first of these groups was held in London, and the second in Birmingham.

The first of these groups was small, comprising two men who identified themselves as 'white Irish' and white Welsh' (two other men were expected to attend this group, but did not attend, both giving less than an hours' notice on the day). One of the participants was employed, and the other was a full-time undergraduate student, and neither had degrees. Their ages were 46 and 21. Participant one had experienced a pregnancy that was unplanned and initially unwanted by himself, and he attributed the pregnancy to being deceived by his partner, who had lied to him about using the contraceptive pill. He accepted the child, but later split up from the child's mother. He also has another young child from a different relationship, and at the time the group was held he was currently involved in legal disputes concerning access, which he was currently being denied by the child's mother. Participant two was engaged in a long-term sexual relationship as a teenager, and his girlfriend had become pregnant. He had wanted a termination but his girlfriend had decided carry the pregnancy to term. During the pregnancy he and his girlfriend broke up, but when the child was born he tried to maintain contact, which he claimed was becoming increasingly difficult.

The second group comprised four men, three of whom identified themselves as 'white English' and one as 'white other', specifying 'Gibraltar'. Three of the men were employed, and one was unemployed. Three of the men had degrees, and their average age was 44. Participant one was willingly involved in what he described as a 'life-style abortion', which he had come to regret. Since then he has had genetically related children, and is a resident, active father. Participant two married at age 19 and his wife became pregnant when he was 22, which was unexpected and unwelcome. He suffered domestic abuse from his wife, and claims that he had often sex against his will, saying that it was rape. He left the marriage because of the increasing intensity of the domestic violence, and has struggled to get access to his child ever since. Participant three had a partner who became pregnant. She wanted to terminate the pregnancy, but he did not. She eventually carried the pregnancy to term and handed the child over to him, and he has raised the child himself with the help of Godparents. He has also been through IVF since then with his present wife. Participant four was abroad when his partner became pregnant, who was native to the country. Their working environment made it impossible to proceed with the pregnancy, and he paid for an abortion.

- **Teenage boys aged between 15-19**

Both of these groups comprised teenage boys, between the ages of 15 and 19 (the deviation from the protocol with respect to their ages has been explained in the passage on recruitment above). None of these participants

gave any additional personal information about themselves, and so I can say nothing about their home lives or their experience with fathers/children.

The first of these groups was recruited through, and took place in, a private school in the Bristol area, and comprised 6 teenage boys aged between 15 and 16. All six of them identified themselves as 'white English'. Two of them were studying for their G.C.S.E.s at the time, and the other four were studying for their A-levels.

The second of these groups was recruited through, and took place in a comprehensive school in the Greater Glasgow area, and was comprised of seven teenage boys aged between 17 and 18. Five of the boys identified themselves as being 'white Scottish', one as 'Asian other', specifying 'Iraqi' and one as 'Asian Indian'. All of the participants were studying for their Scottish Higher exams at the time, and were part of the same science class.

Chapter 10 - Procedures

Organising the groups

Participants were recruited for each group on an *ad hoc* basis. Once they had confirmed their wish to participate, their contact details were stored on a secure database, and once sufficient volunteers had been recruited to run a particular group those men were contacted to arrange a time and a date. For the first few groups, potential attendees were contacted and asked to suggest some dates and times in the next month or so that they would be able to attend. This was successful but was labour intensive, as it required a great deal of toing and froing on my part and a great deal of effort of the part of the men. I noted that all the men up to that point had preferred the groups to be run on weekends, and so for the third group I developed a sheet with a number of weekend dates in the coming two months and asked the men to tick the boxes next to the dates, times and venues they could attend. This made comparison much easier and was less labour intensive on both sides.

This process was facilitated by being as flexible as possible and putting in a great deal of time and effort into recruitment and building relationships with potential participants. As the participants came from all over the country, Birmingham, where the research was based, was an ideal central location to hold the groups, although on four occasions it was more practical to hold the groups elsewhere, two in London, one in Bristol and one in Glasgow. I tried to be as accommodating as possible and was flexible with the timings and the

duration of the groups, and this seemed to spread goodwill amongst the participants who were generally willing to be flexible themselves once they had committed to taking part.

Once a date, time and venue had been settled, I kept in regular contact with the men, and e-mailed/called them the day before the group to confirm attendance. Maps and directions were sent out, and I made my mobile phone number available to them in case they needed to contact me.

On the day, the men and I congregated at the specified venue, where refreshments and food were made available. We met an hour before the discussion was due to start, and in this hour I met with each participant individually and took informed consent and demographic information. This hour also enabled the participants to get to know each other a little before the discussion started, and helped to break the ice.

Discussion structure and facilitation

The exact structure of the group discussion was primarily influenced by a pilot study run by two of the project supervisors, who used a set of scenarios as the focal point of the discussion (Draper & Pattison 2003). These scenarios (Fig. 4, full scenarios in appendix 3) depicted various cases involving fathers and the allocation of paternal rights and responsibilities, which were related to stories in the UK media at the time. The scenarios were distributed to participants a week before the discussion, and they were asked to read through them before the day. The practical advantage of this was that it made

more time available during the discussion, as participants did not have to spend time making themselves familiar with the cases, and more importantly it gave the participants time to think about the complex issues involved.

Scenario	Summary of content
1	A man has no entitlement to decide whether or not a pregnancy is carried to term. If it is, he is responsible for the child, if it is not he is powerless to prevent a termination.
2	A man can be legally absolved of paternal responsibility if a paternity test proves he is not a genetic father, but the same result can also mean he loses paternal rights.
3	Sperm donors do not have any responsibilities or rights toward their genetic progeny. Donor conceived children now have the right to identifying information about their donor-fathers.
4	When an embryo is frozen as a result of IVF treatment, consent from both the man and the woman is required in order for the embryos to be used.
5	A recent court case ruled that the man who's sperm was accidentally used to fertilise the eggs of a woman who was not his wife was the legal father of the resulting child, but he was not given custody or access rights, which instead went to the husband of the mother.

Figure 4. Summary of scenarios

Using these scenarios as the basis of the discussion, I then further developed the exact methodology during a pre-study group and my own pilot group. During these groups I experimented with recording equipment, room layout, facilitation methods and ways of opening the discussion. Both the pre-study group and the pilot group were run with students, and their sole purpose was to practice facilitation and to experiment with ways of running the groups. As such, the pilot data has not been included in the analysis.

Given the focus of the project and the need to elicit explicit arguments and motivations from the participants I settled on a structured, active mode of facilitation and discussion, which tended to challenge participants and sought actively to clarify the arguments that were being used and the moral positions that were being taken. This high level of facilitator involvement was justified

given that the aim of the research was not to extract narratives (which nonetheless were given), but to identify the normative principles that lay behind the arguments and assertions that were made. Similar methodologies have been used by Alderson *et al.* (2002) who had a particular interest in eliciting certain kinds of response (e.g. ethical, normative responses), without dictating the content of those responses. The aim of this kind of structured group and active facilitation, they note, is to ensure that

principles and values ...[are]... at the centre of the discussions, and ... [encourage] attendees to debate critically, to question and probe one another's comments, to examine the logic and structures underlying common arguments, and to reach the 'deep structure of bioethics' (Alderson, Farsides, & Williams 2002) pp509-10.

This choice of methodology, then, is in keeping with the notion that methodology must be purpose driven (see above)³⁵.

I found that the best way of getting the discussion started was to ask each participant two general questions that focussed in on the key research aims, and allow each participant to answer individually. The questions asked were as follows:

- What do think makes a man a father?

³⁵ Williams and Farsides have gone on to use this kind of methodology very successfully elsewhere (Farsides, Williams, & Alderson 2004;Wainwright et al. 2006).

- What do you think makes a man legitimately responsible for, and gives him legitimate rights over, a child?

These two starter questions served to focus the group in on the research questions and gave them a route into thinking about the topic. It allowed them to articulate their thoughts freely, and gave the group a point of reference from which to begin the discussion. These initial thoughts were often referred to, and returned to, during the discussions.

Once the group members had answered these questions to their satisfaction, I opened the discussion up to them by asking a very open question:

'Looking at these scenarios, is there anything in particular that you think needs discussing? Do you see anything that is particularly good or bad, fair or unfair, about them?'

Again, the specifically moral terminology used served to refocus the group on the moral issues, and seemed to work well. This kind of question, in various guises was used a great deal throughout the discussions. The participants usually took over from this point and my role as facilitator then became one of probing and summarising - although this was often also done by the participants themselves. I tried to model my interventions on the framework suggested by Krueger and Casey, making use of *introductory* questions to begin the discussion; *transition* questions to move on and link themes and scenarios together; *key* questions to probe the issue that were key to the

research questions; and *ending* questions directed towards bringing segments of the discussion to a close (Krueger & Casey 2000).

It was decided early on that it would be preferable to have a research assistant present in the groups who would help with the practicalities of managing the group, monitor the recordings, and take additional field notes as a back up to the recording equipment. The pilot group and the second group proper were conducted with one of the project supervisors (who were all women) acting as assistant (no-one being available for the first group proper). This proved problematic as it became clear that the participants, who were all male, were very conscious of the presence of a woman in the room. One participant, mid way through a sentence, turned around to address her and apologised for saying something that could be construed as 'anti-feminist'. The risk that a female presence might affect disclosure was too great, and after discussion with my supervisors we decided that a different, male, assistant should be found, who was then present for all but four of the ten groups that followed.

All discussions were recorded onto a portable mini-disk recorder using an unidirectional condenser boundary microphone, and a back-up recording was made onto a portable digital recorder using a separate microphone of the same kind. The mini-disks were labelled and kept securely in a locked cabinet, and were transcribed as soon as possible after the group took place. According to the regulations imposed on me by the LREC that approved the project, the recordings will be destroyed a maximum of three years after they

were made. All but the last four recordings were transcribed by myself. The last four were transcribed for me by the assistant who was present in the groups. This was necessary because constant and sustained transcribing had led me to suffer 'repetitive strain injury' in my right hand, which made transcription difficult and painful. Further funding for this transcription was sought from the Wellcome Trust, and was granted in July 2006. All transcripts were checked over by myself, and were sent off to the project supervisors to read through in preparation for the coming analysis.

Chapter 11 - Analysis

The analytic process used most closely followed the model Crabtree and Miller refer to as 'editing' analysis (see fig. 5) (Miller & Crabtree 1992). This style requires the analyst to act as interpreter, to identify and code meaningful data and to identify and develop themes emerging from within it. As themes began to emerge, they were then fed back into the groups that followed, and as such the analysis began to inform the data collection as it generated specific questions to ask and themes to test. Following Williams, I attempted to "*shuttle back and forth between conceptual speculation, reflection, reading, data collection and analysis*" (Williams 2004) p77, and emerging themes and explanatory hypothesis were fed back into the focus groups and re-evaluated and re-formed as an iterative process.

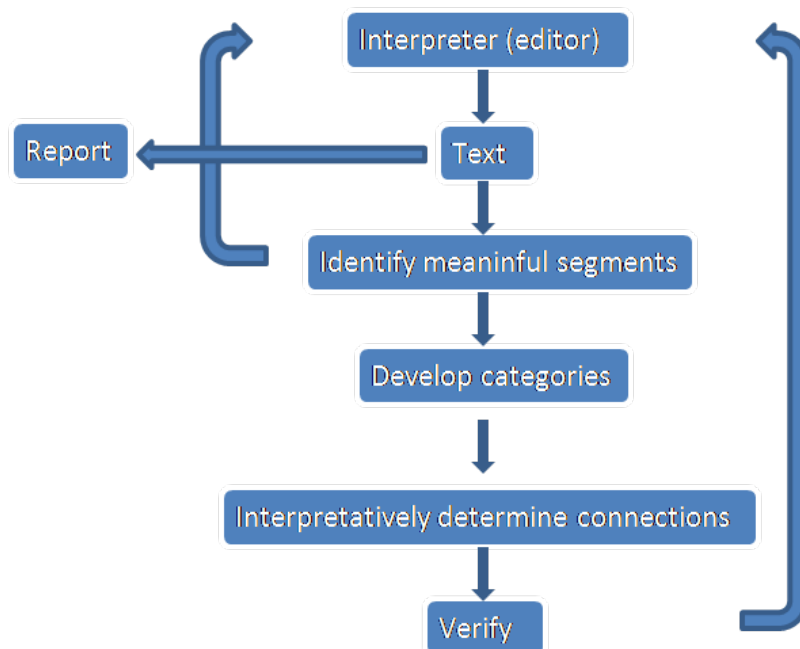


Figure 5. Diagrammatic representation of editing analysis, adapted from Crabtree and Miller, p18.

Analysis must be purpose driven (Krueger & Casey 2000; Miller & Crabtree 1992), and the style of analysis must be directed towards answering the research questions. My analysis, therefore, was based on selective coding that focused on normative claims that were relevant to the research questions, delineated as:

- i How do the participants construct 'fatherhood' as a normative concept?
- ii How do participants think a man should acquire paternal responsibility?
- lii How do participants think a man should acquire paternal rights?

It is important also, when commenting on how the analysis was purpose driven, to say what the analysis was *not* trying to do. There are many possible analyses of these data, and therefore there are many things that I have not done, or looked for, that nonetheless might have been interesting and valuable. Most notable is that I have not sought to analyse the data for differences between the groups of men. Rather, I have sought to analyse the data in such a way as to get a snapshot of views that represent the groups taken as a whole and the intuitions they had in common. Whilst a comparative analysis might yield interesting and valuable results, it was not the purpose of the study – although it is something to which I would like to return in the future.

Coding was carried out as a method of organising and managing meaningful segments of data (Coffey & Atkinson 1996), and was the first stage in the formal analytic process. Codes were attached to the data, and multiple codes

were often attached to the same segment. Multiple coding is warranted when a coded segment is both descriptively and inferentially meaningful (Miles & Huberman 1994), and the data was generally rich in both kinds of meaning.

In an attempt to keep the segments in context, I generally refrained from coding small segments of speech and, rather, coded larger sections, often including the parts of the discussion prior to and immediately after the segment of interest. This made coded segments bulky but ensured that the context was not lost upon retrieval. The use of CAQDAS (see below for details) software ensured that these bulky segments could be easily managed.

Coding, as the first stage in formal analysis, was necessarily selective, and focused on the meaning of the data rather than on the words used (Miles & Huberman 1994). As such, the coding itself was an interpretive process, in which meaning was elucidated through my own understanding of the significance of the context in which the words were uttered (Bliss, Monk, & Ogborn 1983).

Coding was performed in two streams. The first stream was 'free coding', in which the data was taken at face value and codes were attached without particular reference to previous data sets. This simply means that the 'primary coding' was conducted in an unstructured way, focussing on the data set in front of me, and generating codes solely in reference to that. The second stream was performed using the CAQDAS software ATLAS-ti (version

5.0) and aimed at standardising the codes so that the groups could be compared and analysed using the same conceptual framework. No attempt was made to limit the number of codes used in the first stream, and during the second stream only those codes that had been replicated or could be replaced by an existing code were removed.

This method was chosen because the richness of each data set meant that too rigid a coding framework from the start would inhibit full analysis, but not enough of a framework would make the data unmanageable. The two-stream system compromise was labour intensive, but was advantageous insofar as it allowed sufficient conceptual freedom to ensure the analysis did not become conceptually bound by what had gone before, but it also provided enough of a framework to ensure that coding was performed consistently. The two-stream coding also helped to reduce the possibility of bias, and helped me to maintain a sense of objectivity during coding. Using standard codes from the start would have increased the temptation to use existing codes that did not quite fit, rather than produce new codes and increase the workload. By giving myself free reign to start with, and then standardising later, I allowed myself to create new codes as and when necessary, and then gave myself the opportunity to keep or discard those new codes when I re-evaluated them during the second stream. If I had created multiple codes that were unnecessary I removed them and re-coded using the previous standard. Similarly if I had used an existing code in a way that differed from my previous usage, I was able to create a new one (see appendix 4 for example of coded transcript).

The CAQDAS software was employed as a tool to help manage and organise the data, facilitating easy retrieval of coded segments and providing a time and space efficient way to store the data. Whilst the software facilitated analysis, it did not *do* the analysis. As Bringer *et al* note, the researcher is still responsible for asking the questions, interpreting the data, and deciding when and where to code (Bringer, Johnston, & Brackenridge 2006)

Interpretation

Because participants were generally unable to construct explicit moral arguments, the analysis often required an interpretation of their reasoning (Scully, Banks, & Shakespeare 2006). The need for interpretation was minimised by an interactive facilitation method, which sought to probe participants' reasons and justifications as the discussion progressed, aiming to encourage participants to make their reasoning explicit without influencing their views (see appendix 5 for examples of this from the transcripts). It was not, however, possible to make all participants' reasoning transparent in this way, and interpretation was most necessary when normative claims were bound up and hidden within more complex narratives. Often, in the telling of a story or the posing of a question, participants made a number of normative assumptions in which it was taken for granted that certain conditions do or should hold. The aim of the analytic interpretation was to draw out these assumptions and make them explicit; constructing a chain of reasoning that comprised a moral argument. I aimed to carry out this interpretation sympathetically, so that it was consistent with those views and reasons that

had been made explicit. The interpretative project was an ongoing, iterative process, utilising a method of *analytic induction* (Bloor, Frankland, Thomas, & Robson 2001; Silverman 2004b), in which interpretations of the data were treated as provisional hypotheses and were introduced into all proceeding groups where they were tested and re-evaluated. *Analytic induction* was also employed *within* each group, and during each group I attempted to summarise and interpret the discussion as it progressed, allowing participants to reflect on my interpretations of their views and respond to them (see appendix 5 for sample transcript showing use of analytic induction and active facilitation).

Validation and trustworthiness

The first step towards validity is to ensure that the purpose of the research is understood and explained. Here, I align myself with Cho and Trent, who argue that in order for a piece of research to be valid, the aims of the research must be clear and the method of analysis must be specifically tailored to meet those aims (Cho & Trent 2006). In making my research aims and analytic processes clear, and in tailoring my methods specifically to the research questions and the kind of answers I was looking for, I hope to have achieved this.

There is a natural human tendency to hear only those comments that support an emerging hypothesis and ignore those comments that challenge it (Krueger & Casey 2000). Recognising this, I have made a systematic effort to check my analysis, and check it doubly when I found that a new data set supported previous hypotheses. The analysis from each group was checked independently by the three project supervisors against the transcripts, and regular meetings were held to discuss and work through any problems and disagreements. For the first three groups this checking was taken a step further, and the transcripts were coded independently by two of my supervisors, to ensure that my initial analysis and coding was appropriate.

Because the analysis was interpretative and required my reading between the lines, it seemed important to check my interpretation against the participant's own understanding of what was said and what was meant, and to amend the

analysis if necessary. In order to do this a report from each focus group was produced and was sent to each participant in that group. They were invited to read through the report and then to provide feedback. Their responses were guided by the following four questions:

- Do you think I described what went on in the group accurately?
- Do you think I missed anything out that you felt was important?
- Do you think I have misinterpreted or misunderstood anything you said?
- Do you think I have over- emphasised something that you felt was not important?

Unfortunately, relatively few participants provided feedback, although every response to the data I did get was generally positive. The intention was to amend the analysis in light of the responses, but this was not necessary as none of the feedback was critical of the analysis, and most was actively supportive, saying that a very good job had been done. Participant feedback, often called 'member validation' can by no means validate an analysis entirely (Bloor 1997). There are a number of problems associated with this process, including the difficulties participants may have in understanding an academic report (Bloor 1978), and Abram's observation that participant validation only becomes possible when the analysis is seen by the participant as compatible with his own self image (Abrams 1984). I tried to minimise these negative effects by writing the reports I sent to participants in a clear and non-academic prose, whilst maintaining a factual and non-judgemental style to avoid any

perception of criticism or moral evaluation. The reports I produced lay somewhere in between formal academic writing and informal reporting, as I tried to achieve a balance between accessibility and sufficient detachment to assure participants that I was not judging them, thus reducing the threat to their self-image (see appendix 6 for samples of reports)

Despite these difficulties member validation can serve to provide a check, and positive responses can suggest that no glaring and obvious errors have been made in the interpretative project. Whilst we may not have reason to suppose that participants have any privileged status in the analytic process, member validation can nonetheless be taken as simply another source of insight (Fielding & Fielding 1986). The fact that the participants who gave this feedback felt that their views had been accurately represented and interpreted suggests that the analysis is a fair representation and summary of what went on, and has not been distorted by researcher bias. Thus, this 'validation' method might be more accurately be described as a method of error reduction (Mays & Pope 2000), and this is way in which I have used it. The poor response rate in this instance means that not too much can be made of the positive responses. There is no way of knowing if those who didn't respond refrained from doing so because they were unhappy or angry with the report, did not understand it, or simply forgot or couldn't be bothered. The responses I did receive added nothing new to the analysis, and generally just served to endorse my own analysis (see appendix 7 for samples of responses). One response, from participant FGS204 was slightly more critical than the rest, and he objected to my use of the term 'misogynistic' in my report, urging me

not to confuse men's bitterness towards their ex-partners with bitterness towards all woman. I took this point on board, although at the same time I think that he reacted to the word rather than the context and thus misunderstood what I was trying to say. I was in fact saying that some men in the group tended to display misogynistic tendencies, although these were not played out in full – which is, I think, the same point that he was making. This event sensitised me to the fact that certain words might have different evaluative meanings for different men, and I began to make much more of an effort to ensure that the words I used were clearly defined and contextualised.

Reflexivity (2)

Although I started out from the perspective of a white, middle class academic, whose experience of fatherhood was relatively benign, with no particular agenda to push or bone to pick, it is likely that this nonetheless influenced my analysis to some extent. One of the consequences of having had a relatively content and happy experience of being fathered is that I may have been more likely to be comfortable for things to remain as they are. I have no reason to want to 'rock the boat', and thus I may have been more inclined to come to conclusions that fit with my own world view. Similarly, however, I had no particular inclination not to rock the boat. I am not a father, I am no longer under the influence of my own father – I have no personal interest, at present, in maintaining any kind of *status quo* any more than I do in bringing about change.

One way of minimising the impact of researcher influence is to have the analyses checked by other researchers – and this was done by the project supervisors. Given that they all had different experiences and perspectives to mine, it is likely that those points of interpretation that we agreed upon were not contingent upon my own personal views. However, it is also the case that all of us had certain traits in common – we were all ‘middle class’ white academics. It is quite possible that had (for example) a coloured ‘working class’ man who had been raised in a one parent family by an abusive step-father been a part of the research team, the results may have been quite different. The extent to which that would have been desirable depends on the extent to which we can be certain that he, as well as us, would have been able to look at the data with some amount of detachment, and not to let his interpretation be coloured by an agenda borne of his particular circumstances.

The point is that it can never be the case that one can look at a data set and conduct an interpretative analysis from a completely neutral vantage point. The key to conducting effective qualitative research is to be aware of how one’s perspective may colour the research, to guard against it, and to be open about it – which is what I have tried to achieve with my analysis.

Section Four – Results and Discussion

Introduction

In this section I will present the findings of the empirical study described in section three, and in doing so I will be presenting the men's moral idealisations of fatherhood. Given this, my focus is primarily normative, concentrating on the values the men held and how these values relate to fatherhood. What is offered is a selection of 'moral tales' (Ribbens McCarthy, Edwards, & Gillies 2000), in which participants expressed and defended their normative constructions of fatherhood. Chapter twelve will discuss the meaning, imagery and ideology of fatherhood, in which the focus will be on what men think fatherhood means, what it takes to be a father, and what roles they think a man should take on as a father. Chapter thirteen will concentrate on the value of fatherhood, in which the value attached to the meanings of fatherhood identified in chapter twelve will be explored. Chapter fourteen will discuss the men's views on how the rights and responsibilities of fatherhood should be generated, and will link this to concepts of what fatherhood is, and what kind of fatherhood is valued, as discussed in chapters twelve and thirteen. At the end of each of these chapters is a summary box, containing the key themes discussed in that chapter. The final chapter of this section will draw out the main themes and summarise the main findings.

When presenting the results I will draw on typical quotations in order illustrate the points I am making. The quantity of data gathered has meant that I have

had to be selective about what to include, and in doing so I have selected those quotes which are the best exemplars of the point being made. The quotations have also been edited to make them more readable. This means that many 'ums' and 'ers' have been removed, as well as some tangential comments. Edited parts of the quotations are represented by a '...' in the text. At the end of each quotation is a number in brackets, and this is a reference number that locates that quotation within each transcript. I have included these so that the reader can see the quotations have not been taken from only a small part of the discussion, and so that, if necessary, the surrounding context of the quotation can be quickly retrieved. Within the quotations, segments contained within round brackets are passages that could not be clearly heard, and thus may not be entirely accurate. Segments enclosed within square brackets are small interruptions where someone has spoken over the top of the main speaker. The speaker ID preceding each quotation contains three letters and a number, followed by a forward slash and two numbers. The three letters and first number identify the focus group (see fig. 2), and the numbers after the forward slash refer to the individual speaker within the group. Thus 'FGA2/03' refers to participant number three in the second active father group.

Chapter 12 - The meaning of fatherhood: Imagery and Ideology

In this chapter I will present the findings on the men's constructions of the imagery and ideology of fatherhood. This involves presenting the men's conceptions both of what fatherhood means and what fatherhood involves. We saw in Section One that fathering ideology is somewhat confused, and that there are different legal and social conceptions of the 'ideal father', and the purpose of this chapter is to explore the extent to which the men's perceptions of the 'ideal father' reflect those suggested in the literature.

As we saw in Section One, fatherhood ideals have tended to shift in relation to other social and economic changes. The general trajectory moves from patriarch and moral overseer, through breadwinner, gender role model and finally to the current, androgynous, 'new father' model. It was also noted that too much emphasis on these macro-histories can blind us to the everyday reality of fathering throughout history, which, as Burgess and Lupton & Barclay have shown, often found individual fathers disregarding the fathering norms of their time (Burgess 1997; Lupton & Barclay 1997). To say that all fathers at time 'T' behaved in way 'B' would be too simplistic but, conversely, to deny that these general ideological shifts have occurred, and that they do shape our normative constructions of fatherhood, would be equally obtuse. This chapter provides a snapshot of that normative construction, seen through the eyes of the participants in this study.

Claims that fatherhood is in crisis stem directly, as I argued in section one, from confusion about what fatherhood means, what fathering is, and what is

expected of a man who identifies himself, or is identified by others, as a father. In this chapter it is these issues of expectation and meaning – of imagery and ideology – that will be explored.

Fragmented concept – multiple meanings

FGS1/04 ...I was just thinking about...what the word might mean...in my mind what a father might be and what a parent might be and the dad might be...and I think 'father' is sort of like on the baseline which is about there being a relationship, which is probably genetic, and that then carries with it certain responsibilities and obligations, being a parent is probably more...about actually being a carer... and you can...do parenting well and you can do it not so well...but...being [a] dad...is something more than those two... in my mind the term 'dad' conjures up notions of, you know, warmth and a stronger relationship, it's a deeper bond... (54:54)

Fatherhood emerged from the focus groups as a fragmented concept – a confused concept even – which was used to denote a variety of different roles and relationships. The series of semantic and conceptual distinctions raised in the quotation above is typical of the findings of this project. The idea that there are different kinds of 'father', each playing a different kind of role seems to be key to the men's understanding of fatherhood. 'Father' is not a fixed term with a fixed meaning, but a fluid concept that is used to refer to various kinds of relationships that can exist between a man and a child. Rather than simply being 'a father' a man is a particular type of father, and these different types of father are constructed in different ways.

FGA2/03 ... I think you...touched on it briefly when we were asked the two questions at the

very start about what makes you a father...and the two things I think what I remember you saying were erm...obviously the genetic link and...the actual physicality...of living as the child's father erm, as in responsibility and emotional support and financial support" (745:745)

The dominant narrative we get is one of fatherhood being constructed in two ways: 'father as progenitor' and 'father as carer'. When the men in the groups were asked for, or offered, definitions of fatherhood, they tended to make this distinction in terms of fatherhood 'obviously' being biological, but then claiming that fatherhood is also more than biology, that it is about forming and maintaining caring relationships.

FGS1/01 ...I suppose in the narrow sense the father is the biological...erm, you know father of a child, of the children...but um I think it's um broader than that... (26:26)

FGE1/02 I mean my view's in terms of what it takes to be a father there's obviously the physical thing, er the man's sperm's created the child, but I think ...in terms of like adoption for example where a man can, may not have a genetic link but he takes responsibility for the child...it can be just as strong a link and bond as if he'd actually produced it physically [3: hmm], I think there's, there's two levels almost (21:21)

This 'fragmentation' of meaning seems to lend support to Sheldon's thesis that the concept of fatherhood is ceasing to be conceived as one monolithic whole, and instead is coming to be constructed in a number of different ways, in which each route to fatherhood is equally important and legitimate (Sheldon 2005). The implication of this fragmentation is that one child might have more than one father, a social father and a biological father, and according to Sheldon it is becoming recognised in law that each of these fathers has a salient role to play. What we see here does not support that claim as such,

but it does indicate that the concept of fatherhood is fragmented. Whether or not it is accepted that a multitude of men who are 'fathers' can justly claim to be involved in a child's life as a 'father' is a different question entirely, and will be discussed in the chapters to come.

Terminology

A variety of different terms were used to refer to the different kinds of fatherhood that were discussed, the purpose of which was differentiation rather than evaluation. Complexities arose because often the same term was used by different participants to refer to different kinds of father. What these terminological distinctions show us is that, regardless of the terms used, the participants felt the need to refer to different kinds of father in different ways, with different meanings being attached to each different term.

FGP2/03 ...there is a distinction between a genetic parent and a father...a father's the one with obligations, the genetic parent (the one with not)...and then father and mother technically should mean the same which is basically a nurturer, someone who's actually raised...that child, and you can have something like guardian-nurturer as well, which is someone who's not genetically the parent but has actually also had an active hand in raising the child... (330:330)

These terminological distinctions reflect those present in empirical, philosophical and legal literature, in which the paternal role is often split into two distinct parts – the progenitor and the carer. It supports Hargreaves' findings that fatherhood is constructed through narratives that are either biological, social or both (Hargreaves 2006), and suggests that these particular conceptual definitions of fatherhood that are taken for granted by philosophers

and legal theorists *are* reflected in lay conceptions. In contrast to ‘multiple pluralistic’ theories of parenthood, such as that offered by Bayne and Kolers (2003) on which intention to rear, a causal role, a carer role or a genetic role can all make a man father, these findings suggest that to be a father, or to be considered a father, a man must either be a progenitor or a carer. Fatherhood is, in the eyes of these men, a dyadic concept.

For the purposes of this analysis I have adopted the terms ‘progenitor’, which makes a man a ‘biological father’, and ‘carer’, which makes a man a ‘social father’. These terms will be used consistently throughout the ensuing discussion and analyses. Although they do not reflect the terms used by all of the participants, they do convey the meaning, insofar as they differentiate between the two kinds of fatherhood identified.

The dominant conception of fatherhood, then, to emerge from these groups is one in which to be considered a father one must be either a progenitor or a carer. A man is either a biological father or a social father, or both. It is important to note that these distinctions do not necessarily carry with them any evaluative connotations. Although, as we shall see later, these different kinds of fatherhood are evaluated and ethically ‘ranked’, the distinctions in themselves carry no evaluative weight. They are purely semantic tools, used to set different types of father apart.

Father as progenitor

FGS1/04 erm...I think a father is first of all a biological entity, donates his genes to produce a child... (30:30)

FGD1/02...being the person that raises the child is important as a father, but it's not the only reason, and it's not the only part of being a father because... we're talking [about] the sperm that makes, that creates him is obviously makes, makes the father and is genetically the person involved... (28:28)

Fatherhood as 'progenitor' was often constructed within a narrative of needing to acknowledge 'biological reality'. Some participants thought that the concept of fatherhood was incomplete without acknowledging the biological contribution. The idea that fatherhood entailed a biological relationship was, for some, simply a matter of definition. During a discussion about whether or not the biological parents should be placed on the birth certificate, one participant claimed it would be a 'strange denial of biology' not to. For him, the birth certificate is there to record the facts of a biological relationship between a parent and a child. He went on to suggest that this biological relationship can be separated from any social relationships. This way of constructing fatherhood is reminiscent of Callahan's view that fatherhood simply is a 'biological condition' (Callahan 1996), and may give us reason to rethink our very quick dismissal of that view .

There were some participants for whom biological fatherhood was more than an expression of biological fact, for whom, for a relationship to be one of 'fatherhood', a genetic connection was essential. It was often implied that

could be attached to both progenitors and carers. It is noteworthy that these predominantly biological conceptions of fatherhood were really only put forward by men in the separated father and the IVF groups, and this is something to which we shall return, in the next chapter, where the reasons for valuing the different kinds of fatherhood will be explored.

Father as carer

FGD2/02 ...I think fatherhood, being a father is actually about...emotional attachment to the child, I mean...the example that you give...where a fella ends up bringing up a child that ends up, appears not to be his own, I don't think that makes him any less of a father ((murmur of agreement from the group)). ...having a straightforward genetic link with a child just means that you're able to produce sperm, so what, a frog can too, big deal (15:15)

FGT1/06 If it...was...me, and I was past the age of ten and...my biological father turned up and I'd had another, kind of... dad looking after me, I'd always think of him <the social dad> as...the real father, cause he'd been looking after me (273:273)

The majority of participants tended to construct fatherhood in terms of social interaction and role fulfillment rather than biological facts. Many participants felt that the true meaning of fatherhood lay in the interaction between father and child, in physically 'being there', in loving, caring and nurturing, and in supporting both financially and emotionally. There was a tendency for fatherhood to be defined in terms of roles to be fulfilled, and for 'fatherhood' to be attributed to whatever man best fulfills those roles.

FGA1/04 ...actually having sex and the result of that being a pregnancy is one thing, but it's not fatherhood... Fatherhood and the development of paternal responsibility is...about

developing a long term responsibility...for the collective good of the child, and taking that responsibility right through in terms of the many kind of aspects of that child's welfare, but that doesn't necessarily relate directly to...erm you know, the biological kind of, instantaneous creation of a child (35:35)

One participant in a resident father group had raised daughters whom were both genetically and not genetically related to him, and had particularly strong feelings about characterising fatherhood in social terms. He seemed to feel that constructing fatherhood as a biological relation undermined the relationships that he had with his non-genetically related daughter. For this man it was the act of bringing the children up that made him a father, and not the 'biological reality'.

The 'father as carer' model seems to be based on the notion that fatherhood is primarily a state of doing, and not a state of being. This is perhaps best illustrated by a comment made by one participant of a resident father group, paraphrasing a recent speech by Donald Rumsfeld:

FGA2/04...they've quoted Donald Rumsfeld as somebody today saying 'if it walks like a duck and quacks like a duck [3: yeah] it is a duck', and I think if it walks like a father and talks like a father it is a father, in other words, the person doing the father thing, which would mean living with, probably, supporting, emotional support, then that person is the father... (779:779)

Whilst this is itself a clear endorsement of a 'father is as father does' position, it makes the assumption that there is a way of acting which is typically 'fatherly'. In order, then, to make sense of the claim that a father is whoever

is 'doing the father thing' we need to have a sense of what 'doing the father thing' involves.

Doing the father thing – three kinds of support

Fundamentally, the father as carer was characterised as a man who is involved in the day-to-day care of his child/ren. As opposed to the father as progenitor, who simply performs a biological function, the father as carer is someone who explicitly accepts his status and participates in it willingly. The father as carer is someone who *chooses* to be a father. 'Father as carer' comprises a variety of different roles, which can be broadly split into three categories: emotional support, developmental support, and practical support. *Emotional support* involves caring *about* and caring *for* the child (which do not necessarily come hand in hand (Craig 2006)), being a friend and developing strong emotional bonds. It involves, simply, 'being there'. *Developmental support* involves ensuring that the child develops properly, is educated and prepared for the outside world. Here we have the father as a teacher, a moral exemplar, a gender role model and a disciplinarian. Giving *Practical support* is about providing for the material needs of the child, and we have the father as breadwinner, as protector (both physical and psychological) and as a facilitator of opportunities. Genuine warmth and affection, and a desire to be with your child, was considered characteristic of this kind of fatherhood. Friendship was vital, but this was also mixed in with being a guide and a helper.

FGS1/03 a father to me is... a bigger version of your child I think, it's just somebody who's got the experience and the knowledge of having been there before. ...you just try to guide children...you know, help them, protect them...so you can be there for them...you're just helping people through life, you know, you don't own them, you don't rule... so to me it's like being a big mate...that's how my son and I get on...I would without doubt say he's my best friend, and if I had a choice of time to spend with anybody in the world it would be with him...(18:18)

The father as carer was generally considered to exist for the sake of the child. By this I mean that the roles the father as carer was expected to fulfill were roles designed to promote the interests of the child. For example, the father is expected to act as a protector in order to shield his child from harm; the father is expected to act as a breadwinner in order to ensure his child has the physical necessities of life; the father is expected to form a caring bond with the child in order to teach him/her about social relationships.

FGP1/01 ...ultimately I think you are responsible for that child financially in some way, but more importantly you're responsible for that child emotionally and psychologically and developmentally...unfortunately because we live in a materialistic world where money exists and it's the only way you can survive, you can't survive without money, unfortunately we do have the burden if we, if we have a child and we have the responsibility of bringing that child up psychologically, mentally, developmentally...er and emotionally, to give them the stability of a proper upbringing so that they can function well in future..." (255:255)

The idea of fatherhood being 'for the child' comprised a major part of the men's views on the responsibilities of fatherhood, and this will be examined more fully in later chapters.

These constructions of father as carer are particularly interesting in light of the discussion of the ideology of fatherhood in Section One. The ideology reflected in this study suggests that the fatherhood ideal still contains much that is today considered 'historical'. Whilst all the men in these groups tended to incorporate the ideal of the caring, involved 'new' father into their constructions of 'father as carer', they also tended to appeal to ideals of the father as breadwinner, disciplinarian, (gender) role model, and moral compass.

FGD1/03...	my parents separated and divorced when I was ten, and my mother didn't take on any dad, any father responsibilities really, you know, it was kind of a very nurturing and sort of, cuddly home but without a great deal of discipline... (633:633)
FGT2/06	(We have to give a) kid a good grounding in what's right and what's wrong ...that's, like, important, I think that makes a father if you make someone know the difference between being a good person and
FGT2/08	Being a role model
FGT2/06	Yeah
FGT2/08	To be a role model...(27:33)
FGA1/01...	the fatherhood role...is really about...the role in which the more dominant of the couple takes with, you know, earning the income or erm...with the discipline of the child or whichever it might be ... (253:253)
Jl	Do you think it's important the child has two parents, a mother and a father?
FGT1/03	Yes, 'cause...if a baby's just brought up by its mum it can, it'll probably sort of grow up with all this sort of feminine issues at heart than, sort of, male issues, I mean...men and women often have different opinions on issues, so er, it'll probably grow up just having the er...more feminine [issues
FGT1/02	[It needs different role models.
FGT1/03	yeah

FGT1/02	it needs a father as a role model as well (89:101)
FGS1/02	one thing a father can do is offer a role model to a male son, a male child, mother obviously role model to a female child...and it's important for the biological development of...a boy, that he has a father to relate to...if there's no father in boys life it can lead to future problems for him (34:34)

These models do not necessarily reflect the practice of fathers, but reflects the roles that fathers are expected to take on when they become a father as carer. These findings both support and challenge the histories of fathering ideology that we examined in the first section. We see all of the roles that the histories suggest have formed the ideology of fatherhood over the centuries, but what is interesting is that all of these roles are present at the same time. It suggests, contra theorists such as Knijn (1995) who claim that traditional fathering ideologies are crumbling, and contra claims to the effect that fathering ideologies have shifted to an androgynous nurturer model, that the father as carer has simply become incorporated into existing ideologies rather than replaced them. It suggests, in support of the tentative claim made in Section One, that fathering ideology has been building up in layers, with the 'father as carer' model the most recent addition. If we dig below the surface we find the father as gender role model, a little deeper and we find the breadwinner, and deeper still we find the dominant, patriarchal disciplinarian and moral compass. Although no one person evinced all of these ideologies, it is certainly worth remarking that despite so much being made of the 'new father', the 'traditional' ideals are still very much present and influencing men's attitudes towards fatherhood and fathering, and this is something that has

been hinted at in a number of other studies (Brannen & Nilsen 2006;Lloyd 2003;Ribbens McCarthy, Edwards, & Gillies 2000).

'Father' or 'parent'

Whilst specific roles were identified for fathers, a few participants wanted to reject the term 'father' (or 'mother') in favour of the androgynous 'parent'. The idea was that aside from a few biologically determined conditions (breastfeeding, pregnancy and giving birth) there should not be anything to differentiate 'parenting' into gendered roles.

FGS1/02...setting aside the biological fact of a father is the one that sires the child and the mother is the one that gives birth to the child and breast feeds, and that's the only two things a mother can do that a father can't, once you've got past that you're then into parents, and parent's job function is...to provide shelter, protection and guidance to the child, and a father or mother can do both of those..." (34:34)

This kind of idea tends to reinforce the notion that fatherhood or 'parenting' is considered a social function, which can be distinguished from the biological function of progenation. The whole point of making the distinction between 'father' and 'parent' is to render biological function superfluous to conceptions of parenting. 'Parenting' is the social act of bringing up a child (an un-gendered 'father as carer'), and the term is preferred purely because it emphasises the social connections and ignores biological functions, which are to large extent involuntary.

Summary

Fatherhood emerges from these focus groups as a predominantly dyadic concept, either meaning 'progenitor' or 'carer'. Each kind of father has its own specific meaning and ideology associated with it, though the 'father as carer' is a much richer concept, comprising nurturer, gender role model, moral guide, disciplinarian and breadwinner. This casts doubt on suggestions that the ideology of fatherhood has shifted in recent years to that of 'androgynous nurturer', and instead suggests that it has been added to existing ideologies. The father's role is still thought to include breadwinning, gender role modeling, and discipline, only now it also includes nurturing and day-to-day emotional involvement. This, of course, adds more to an already demanding role, and suggests that the expectations placed on father's shoulders are ever increasing.

The findings presented here tend to support Sheldon's fragmentation thesis insofar as it provides some evidence that fatherhood is being conceptually divided into constituent parts, and implies that a child could have two different fathers, one biological and one social. In this sense it also supports Fuscaldo's claim that there is nothing wrong with thinking that a child can have more than the standard two parents. It also appears that the father as carer is predominantly constructed as being *for* the child, as the roles associated with it are all directed towards facilitating the child's development. This implies that being a father as carer is primarily a state of 'doing', which exists for the sake of the child. Conversely, the father as progenitor is a state

of being, which is not dependent upon performing any kind of role other than the initial provision of sperm.

Key points

- Fatherhood is predominantly a dyadic concept, meaning either 'progenitor' or 'carer'
- It is considered important to be able to semantically distinguish between these two meanings.
- Each kind of father is expected to play a certain kind of role
- The father as progenitor role involves the provision of sperm.
- The father as carer role can involve being: a disciplinarian; a moral compass; a breadwinner; a gender role model; and a nurturer, and involves providing emotional, developmental and practical support.

Chapter 14 - The value of fatherhood

In the previous chapter we concentrated on the imagery and ideology of fatherhood. By looking at the meaning that 'fatherhood' held for the men, we were able to identify what it is they expect a father to do and what they think a father is. We found that there are two competing conceptions, 'father as progenitor' and 'father as carer', which dominate their constructions of fatherhood. It was clear, however, that participants did not simply distinguish between different types of fatherhood; they also *evaluated* them. Preferences were shown for certain kinds of fathering. Some were seen to be more valuable than others, and various arguments were given for prioritising one kind over another. It is these evaluations that we shall now explore.

The value of 'being there' – the 'Good' father

Probably the most dominant theme to emerge from the groups is the valuing of the father as carer over and above the father as progenitor. This tended to be expressed most clearly when the two kinds of father came into conflict. One good example of this occurred in an FGA group, in which the men were asked to give their opinions on whether or not a father as progenitor should be allowed access to his progeny after a long absence, and whether he should be allowed to take over the fathering role from the father as carer.

FGA2/04 I mean we're not trying to decide what the law should be...we're trying to, we're trying to pick apart what fatherhood is about, and I'm suggesting... that fatherhood...sometimes is not about genetics at all, and even if there's a very clear genetic

link it still need not necessarily be fatherhood...I don't think this man is in any sense, except a very obvious but unimportant biological sense, the father of these children (391:391)

This response is typical of the men's responses across all the groups, and emphasises the value the men placed on 'being there' and 'doing the father thing'. The evaluation here could not be clearer. The 'father as progenitor' is a father, but he is a father in an 'obvious' and 'unimportant' sense.

Another participant, this time a separated father, talked about fatherhood being 'won', and expressed his preference for the winner being the father as carer. Fatherhood, for him, is more about being a carer than a progenitor.

FGS1/01 ...well I certainly see fatherhood in terms of...the sort of emotional and physical...care they give, not necessarily the kind of genetic link between you and the child as well, so I would sort of challenge some of those assumptions in terms of the notion of fatherhood being won in terms of who the biological father is (66:66)

Another form of evaluation, and one through which the father as carer was clearly ranked above father as progenitor, was in the form of the 'good/bad dad' dichotomy (Furstenberg 1988; Marsiglio 1995a). The concept of the 'good' father was constructed around a father as carer narrative, and the 'bad dad' was often constructed in terms of the 'father as progenitor' who does not go on to become a carer. Lupton and Barclay note that positive fathering images portrayed in the media are always of the involved, nurturing father, with negative stereotyping always attached to the absent, uninvolved or unwilling progenitor (Lupton & Barclay 1997). This study tends to support that dichotomy, and reinforces the notions of the *good*, involved father as carer

and *bad*, uninvolved father as progenitor. The claim is not that a progenitor is a bad father *per se*, but that being a *good* father is about more than progeneration.

FGP2/01 I would say what makes you a father is the genetics, the sperm, what makes you a good or a bad father is exactly what you've just explained (16:16)

FGS2/01 well you're looking at what is a father, but you're looking (at) a good father and a bad father aren't you so, again, when we've talked about what a definition of a father is it's having that desire and commitment to be a father, so you've got there's like the component parts isn't there, you've got the genetic link, and then you've got the commitment afterwards for that child throughout its life, to be there for him as the dad" (598:598)

As these passages illustrate, it was thought that a man can become a father by becoming a progenitor, but he only becomes a *good* father by fulfilling the role of father as carer, which involves commitment and desire. This was often contrasted with progeneration, which was thought to require very little effort. It is just '5 CCs of liquid'; even a 'frog can do that'; and, 'any fool can become a father (as progenitor)'. There was clearly a sense in which the value placed on the different kinds of fatherhood was related to the amount of effort and skill that was considered requisite for each. One teenage participant put this very clearly, and simply, in one key phrase that sums up the findings of this entire project:

FGT102 fatherhood's more than just a drop of sperm isn't it...it's taking care of the kid as well (233:233)

The implication is that the term 'father' is evaluatively neutral, and only acquires normative content when a 'good' or 'bad' prefix is used. These evaluative prefixes are used in order to express how well the father in question has lived up to expectations set by the prevailing fathering ideology. A man who simply 'churns out kids' is a father, but unless he is committed to raising them, and puts their interests above his own, he is not a *good* father. Similarly, a man who provides food and shelter for his children is a father, but he is not a *good* father unless he also loves them and is committed to their emotional development.

FGD2/01 I think a computer could provide the basic needs for a child really, couldn't it? It could provide the warmth the food the shelter, but if the love and the understanding and the time and the patience and the care isn't there then it's just some kind of automaton, just churning out kids isn't it really. I think that's what makes the difference between a good father and a bad father. A good father goes the extra mile and does everything for his kids but a bad father is just kind of like well, you know, just do the necessary and that's it

J1 But it's a father nonetheless?, [what about

FGD2/01 [Yeah oh yeah he's still a father nonetheless, just a bad one, a bad father rather than a good father, but yeah equally a father. I suppose how you raise your children up is your decision and that's your bag really, no one can take it away from you, whether it's a good or bad... call (554:558)

A similar point was made by another participant in the second unwanted pregnancy group, who disclosed that the week before he took part in the discussion he discovered his son may not be biologically his. This man had previously said that he thought fatherhood was best described in biological

terms, but then claimed that, biologically related or not, he is the father of the boy he has raised. When challenged about this apparent contradiction his reply made use of the good/bad distinction. He is prepared to semantically redefine his relationship to one of 'guardianship' in the absence of a biological link, but it is clear that it is the 'guardianship' role (or the 'father as carer' role) which he sees as the defining factor of their relationship.

FGP2/01 I don't think we're contradicting at all, I think we all agree that fatherhood was being a father was the point of insemination, a good or bad father is the level of contact and involvement you have. ...just because I've now been possibly robbed of the genetic side of it, it doesn't stop me having been a good father because I took him on as my son, and so that father inside of me which would now be termed as guardianship, I have proved to be a good guardian and I love that child as he was my own... (170:170)

One suggestion that was made by a number of participants was that any men who do not value the 'father as carer' over the 'father as progenitor' are unlikely to be men who have had children, and this was accepted as probably true by the few participants in these groups who did not yet have children. The idea seemed to be that it was natural to think that having a genetic connection was important and valuable, but the once you have children, and you have experienced paternal bonding, you will realise that you were mistaken, and that biology is not important. This is well illustrated by one participant from an FGE group who talked about how his values have changed over time, and that since he has become a father he has come to value the 'father as 'carer' model over the 'father as progenitor'.

FGE2/04 I suppose if you'd asked me a number of years ago, I suppose I would have said the genetic connection was the most important but...as I've got older or become a father I think the genetic thing is less important to me, if I'd had to have IVF with donor sperm I'm not too sure whether it would have made much difference... I think the... more important side of being a father is the bringing up that child and the integration with that child, so I suppose I've changed my, it's possibly 'cause of what I've gone through, the issue of genetic is less important, I've got friends that bring up other people's children and they you know, they're their kids, so that's how I feel about it (25:25)

A member of that same group, who had not yet had a successful IVF cycle accepted that his emphasis on the genetic connection probably has something to do with the fact that he has not yet the opportunity to bond with a child as a father, and he thought it likely that once bonding does occur his attitude towards biology would probably change.

Exploring and explaining the value of the 'father as carer'

Probably *the* prevalent theme to emerge from all the groups was a dominant valuing of the father as carer model. By no means was it exclusively valued (as we shall see later), but it was more consistently valued. Moreover, the reasons for this dominant valuing of this model seem to be based on judgments concerning the best interests of the child – something to which we will later turn. The most valuable thing about this kind of fatherhood seems to be the love, the commitment and the emotional and physical support that is considered characteristic of this kind of fathering. All of these attributes are, ostensibly, directed towards the child, and valued *because* of the benefits they are thought to offer to a child.

Thus, the valuing of the 'father as carer' model can only really be explained in terms of the best interest of the child. We saw in the previous chapter how the meaning of father as carer was constructed around roles that are performed for the sake of the child, and we can see from the discussion above that the values associated with being a father as carer are entwined with the notion that fatherhood is a state of 'doing' that exists *for* the child. It seems that the father as carer model is valued simply because the perceived function of fatherhood is to raise and care for a child. This would be opposed to the father as progenitor model insofar as all that kind of father does is to create a child, and 'creating' a child is very different to 'fathering' a child.

The value of biology

Despite the fact that the vast majority of participants constructed 'good' fatherhood in terms of the father as carer model, being a father as progenitor was also valued, for a variety of different reasons.

A few men simply felt uncomfortable with the idea of raising a child whom they would always think of as belonging to another man, and whom another man might be thinking of as his. This point was made most succinctly by a participant in one of the FGE groups.

FGE2/04 I mean I have got three brothers who have all had kids naturally and, and at that stage we discussed the issue of whether I want, we wanted to use them as donors... but I actually would've found that more uncomfortable. I would rather have had a total stranger

because I would always think well hang on my brother's thinking that's his child, so I couldn't have dealt with that to be honest (43:43)

Similar concerns were expressed by some of the men who claimed there would be 'something missing' from a paternal relationship in which there was no genetic connection. A good example of this came when one participant, who had IVF treatment, talked about how he and his wife considered adopting before they had a successful cycle. He expressed concerns that he would have always felt there was 'something missing' from his relationship with that child.

FGE1/04 there was always a wee doubt in my mind about how I would feel about an adopted child. Since... my son was born I know for sure I would not feel the same about an adopted child. I would love them the same, I think, I would nurture them the same, I would certainly support them the same...but I would always feel there was something missing (41:45)

The interesting point here is that although some men clearly had a preference for the biological connection, they could not give a reason for that preference beyond the intuition that it would feel wrong. Its significance is based on a feeling – a 'gut' reaction – that having a genetic relationship with your child makes you a more complete father. They could not say why they felt uncomfortable about raising 'another man's child' or what that 'something missing' would be.

First choice and 'second best'

FGD1/02 ...I mean it is fairly important that if you're a father to be genetically responsible,

cause that's why you have children, it's the sort of

FGD1/03 [no, no I don't think so

FGD1/01 [that isn't true, because adoptive parents don't have genetic links with their children

FGD1/02 yeah, but that's second best though isn't it

FGD1/01 no, no it's not at all

FGD1/03 I think it probably is second best (249:259)

There were many instances of participants claiming that it would be their first choice to have a genetically related child. The idea seems to be that there is a natural way of being a parent, and becoming a parent by any other means is always the last option people take. Thus, becoming a father as carer to a child whom is not yours genetically is always a second best option, which a man will take if he cannot become a father by progeneration.

FGE1/04 ...oh well it is, I think everything's second best to natural conception

FGE1/02 hmm ((in agreement))

FGE1/01 if you've got a choice of naturally conceiving or assisted conceiving, or both partners, other than that anything else involved is (second best) (89:93)

These assertions tended to be based on the claim that people will always try to conceive 'naturally' before considering other alternatives such as adoption or donation; a phenomenon that has been reported elsewhere (Webb &

Daniluk 1999). Webb and Daniluk undertook six in-depth interviews with men diagnosed as infertile, and found that all of these men, who now have children by adoption or sperm donation, experienced an acute sense of grief and loss at not being able to father 'children of their own'. The fact that these alternative ways of becoming a father are seen as being a last resort is taken as evidence that they are less preferable to the 'natural' way of becoming a father. However, these kinds of claim were not intended to 'devalue' those other ways of becoming a father, but to establish their preference for a biological connection between themselves and their children.

FGT2/05 ...from my own family experience I know that adopted children who're brought up very well make very loving relationships, and be supported and fit in perfectly well so I don't see from my point of view why that should be considered a second best option

FGT2/01 There's no problem with adoption whatsoever, er they're a perfect relationship, it's just...you know if you had the choice to have a genetic child and to adopt what would you do?

FGT2/05 Well naturally [I'd want a child

FGT2/01 [Obviously you'd have a genetic child, it is first choice then (834:850)

Exploring and explaining the value of biology to fatherhood

The natural bond

One reason for the genetic connection being valued was that it was considered by many participants to be the source of a 'natural bond' which was stronger and more authentic than the social bonds formed between a

non-genetically related father and child. Their arguments were straightforward expressions of the 'blood is thicker than water' dictum, suggesting that a genetic connection is a stronger 'social glue' than social relationships alone.

FGT2/05 ...it's probably so devastating to realise this isn't my child any more...there was a programme on, and there was like psychological links or something that the men just don't feel the same towards the child if they don't believe it's theirs and can't accept that, so then they're being (fairly difficult) to support this child that you thought was yours but then you find out it's nothing to do with you (276:276)

References were also made to evolution, and neo-Darwinian ideas were used to explain and illustrate a man's natural affinity towards his genetic offspring, alongside claims that a man is unlikely to want to have anything to do with a child that is not genetically his own.

FGS1/04 ...I think as far as males are concerned, they want to be a father to their own child, their genetic child, and I think many men, not most men by any means, many men don't have an interest in other people's children, so ... I would be so bold as to say that I don't think many men would want to take on somebody else's children [(like that) (42:42)

The idea that it is somehow more natural for a man to take an interest in his own genetic offspring was a pervasive theme throughout many of the groups, and this idea tended to be expressed, and illustrated, in the significance that was attributed to physical resemblance.

Value of physical resemblance

Physical resemblance to a child was thought by many participants to be nature's way of facilitating a bond between genetic father and child, and this was explained with references to neo-Darwinian evolutionary psychology, suggesting that through physical resemblance a man sees his own genes expressed in his child, which motivates him to care for it. This idea often came up in the context of sperm donation, during discussions about whether a donor would, or should, feel responsible for his progeny. Consistently, participants thought that regardless of any moral obligation, seeing a physical resemblance between yourself or your family and a child will motivate paternal feelings.

FGA2/02...children, boys or girls, look like their dad the first few months, and that is a biological imperative that ...the father bonds with something that looks like a mini version of itself... (1279:1279)

In one donor group, the idea that a physical resemblance facilitated a deeper relationship between people was challenged, but the rebuttal to this challenge offered a vital insight into how and why physical resemblance is valued.

FGD1/04...I would say it's relevant because in the, in this case where...the child is presenting at your doorstep...the simple or commonality in your phenotype, your appearance, reinforces the gene connection, that's all (421:421)

Physical resemblance is not valued for and in itself, but for what it represents. A physical resemblance is valued because it is seen as evidence of, and

reinforces, the fact of a genetic connection existing between father and child. One participant in a teenage group cited a 'fact' that the relatives of parents with non-genetically related children will often look for, and invent, physical resemblances in children. This claim does seem to be supported by empirical work (Hargeaves 2006;Kirkman 2004), which suggests that friends and relatives will 'invent' physical and psychological similarities between parents and non-genetically related offspring in an apparent attempt to 'normalise' the family structure..

FGT2/05 (there's) an interesting thing where regardless of if the child is a couples' or not...relatives will still look for character traits and still identify the child as looking like the (father) (868:868)

The significance of physical and psychological resemblance was described by one participant, who claims not to have realised the impact that this would have until he had children of his own. His claim that, upon realising his son was a 'mini version' of himself, the bond between them grew, was followed up by another participant claiming that that kind of bonding is simply not possible where there is not a genetic connection.

FGE1/03 I didn't appreciate until I became a father...about your children being mini yous, and they are, you know, whether you like it or not...my little boy is a mini me and there's no, absolutely no questions, he looks like me, he's got the same personality as me, he's only two but I can see he's got the same temper as me...and probably the same sensitivity as me and, erm, and I don't think until you are a parent of your own child you definitely don't know that and er

FGE1/04 you could never develop that link with an adopted child I don't think (55:59)

A major finding here is that the majority of the men tended to subscribe to neo-Darwinian orthodoxy, explaining the significance of the genetic connection in terms of 'biological imperatives'. Their use of concepts from evolutionary psychology seemed to be founded in an understanding and appreciation of the 'selfish gene' principle (Dawkins 1976), and in light of an acceptance of this orthodoxy a man who is motivated by physical resemblance, or a man who would only want to raise his own genetic progeny, was seen to be functioning normally, having attitudes that are entirely natural and explainable. However, there was also evident a struggle between perceived biological programming and modern practice and expectation. This was very clearly illustrated in one passage from a non-resident father who talked about the genetic imperative to maintain one's line at the expense of other genetic lines, but then stopped mid flow and claimed that, of course, the men in this group were not subject to that urge because they were 'modern men'

FGS1/03...somebody said...about men taking on...other people's children, and you go back to the days of the lions, er the male lion kills all the cubs of another lion now, so it, it's within us I think genetically, I think, going back for millennia that we wouldn't...we'll accept it because we're modern men now (44:44)

This idea, of 'modern men' having to overcome their biological boundaries to become the kinds of men and fathers that modern society expects is one that I find particularly interesting. It is significant to this study because it illustrates the feeling that there are 'natural' ways of fathering, and that this involves

'spreading one's seed' as widely as possible and not sticking around to raise one's progeny. This natural way of fathering, driven by biological imperatives, is contrasted with the kind of fathering which necessitates transcendence of natural limitations and programming. A man is required, in a sense, to fight against his natural urges to become a father as carer.

The value of 'normality'

Previous research by Kirkman (2004) and Hargreaves (2006) suggests that physical resemblance might be valued because of its normalising effect on the family structure, and this, too, was suggested by participants in this study. Seeing physical resemblance as instrumentally valuable for what it represents, the genetic connection, we can see emerging from the groups the idea that it is 'normal' to have genetically related children. Attached to this is the belief that deviations from this norm attract negative attention, and a desire to avoid such attention. This need for physical resemblance, in the context of sperm donation, was emphasised by the need to select a donor that looked like the recipient father-to-be, and this was considered important to ensure that 'the neighbours don't find out'.

FGD1/03 they don't want the neighbors to be saying ...well how come...you've got Brad Pitt's sperm and your husband's Woody Allen', you know,...it's not really gonna work out, you know, if all the neighbours wonder why... (477:477)

Similar findings have been outlined in a report commissioned by the Human Genetics Commission into genetics and reproductive decision-making (People

Science & Policy Ltd. 2005), in which a number of respondents argued that it is in the interests of the child and the family that parents should be able to choose the physical characteristics of their donor, so that “*a child feels like it fits into the family*” p35.

There was a sense in which men felt under pressure to appear normal. One man from the IVF groups, who was currently considering the use of donor sperm with his wife, told the group how he felt pressurised to have children ‘naturally’ and how he sought generally to refrain from disclosing information about his inability to do so. He thought that it was easier for women to talk about these things, suggesting that he feels there is particular stigma attached to male infertility, which is a well-documented phenomenon (Gannon, Glover, & Abel 2004; Lorber & Bandlamudi 1993; Webb & Daniluk 1999).

FGE2/03 ...I think there is tremendous pressure on couples generally to have children that are seen as natural...I feel, anyway, especially isolated because when your friends, or most of your friends have children or want to have children you, and after say ten years of marriage...haven't got children, everyone starts asking questions...I just find it incredibly difficult, you just don't know how much to tell people and, and I think for a woman maybe there's something you might want to discuss but for a woman it's a lot easier to share with their friend or their family, but for me I've just kept it really to just my closest friends, you know, one or two people and my close family I've told about it but I suspect, in fact people know about it because, by virtue of not having children ... (221:221)

Special cases – separated father and IVF groups

Whilst all participants in all of the groups expressed their valuing of the father as carer, certain groups seemed to engage in a contradiction by also defending a strong genetic model of father as progenitor. It was mainly participants from the IVF groups who felt that something would be missing from a father/child relationship that lacks a genetic connection, and it was mostly, as we saw in the previous chapter, separated fathers who insisted on retaining a genetic construction of fatherhood.

Some of the men in these groups felt that there is only one father, the genetic father, and anybody else is simply a pretender.

FGS2/05 ...you can have somebody playing the role of a father, pretending to be a father, the step dad, it's er not the father (529:530)

FGS1/01 ... I think you've answered it at the end of the day... it's the genetic father, he's the father of the child

FGS1/05 yep, there is only one father. I think, you know, if it's genetic or social or pretend or step [father] he's not the father, he's not (1498:1500)

For these men, even though the father as carer role was valued, the genetic father was the 'real dad'. Their need to maintain a distinction between the 'real dad' and the 'pretender' was not just a semantic point – it is a clear message that biology is important to them.

These men seem to be experiencing an internal contradiction, which is well illustrated by one separated father who admits that the father as carer is probably more important than the father as progenitor, but still wants to retain fatherhood as a biological construction.

FGS2/03 yeah but surely that person who's played father's just as important, or is as important [or more important

FGS2/05 [he's an important person

FGS2/04 yeah

FGS2/03 he's more important than his real dad [5: yeah, absolutely] because he doesn't know his [real dad possibly

FGS2/05 [he's a more important person, but he's not the dad...he's not the real dad but he's been step dad

FGS2/04 he's not a real dad...agreed... (560:571)

Similar inconsistencies were evident for some men in the IVF groups; the most illustrative example of which is one participant who acknowledges that fatherhood is about bringing a child up and forming relationships (being a father as carer), but is still unable to reject his construction of father as progenitor. In considering the use of donor sperm he feels there would be something missing, and he sees this as the difference between being a father and aspiring to be a father.

FGE2/03 ...we are considering the use of a donor sperm through [my wife's] brother in law which I find quite difficult because...I won't be the biological father...and I hear what you're saying that it's not so much the biological link, it's to do with bringing up the child and I think at the back of my mind I do believe that it is really important how one brings up a child and they give it the love, the financial support and everything else, but still there always feels something's missing... (29:29)

These tensions and contradictions seem to cut against the predominant findings of the study. If the father as carer model is so highly valued – and it is – why do certain groups of men still appeal to the father as progenitor model, even though this is inconsistent with their own professed valuing of father as carer?

The genetic safety net

One possible explanation for this lies in a comment made by one separated father during a discussion about 'social' fathers acquiring legal, paternal rights. His words speak for themselves:

FGS2/05 if men are getting...the legal rights to see other people's children that includes our children gentlemen, and you could have your partners current lover saying 'right, I'll see...Bobby on a Saturday morning, you can have him in the afternoon, I've got my legal rights' ... (370:370)

The worry here is that of the 'usurper'. Separated father's circumstances are often such that they are geographically and temporally separated from their offspring, whilst other men are present on a day-to-day basis, enacting and fulfilling the father as carer role. If these men constructed fatherhood solely in

terms of father as carer they would have to admit that the 'other' man, the man 'doing the father thing' is the father of what they consider to be their child, and this is, understandably, unpalatable to them.

The narrative we get is one of men who want to be fathers, good fathers in the sense of being a father as carer, but who feel they are prevented from doing so.

FGS1/04 I think a father is first of all a biological entity...I agree with the previous speaker that my son was really... my entire life. I just looked forward to the time I spent with him, but...I began to realise that as a father I was really only... a benevolent uncle, and that I had no rights, although I had joint custody...because he wasn't living with me. I was in fact a hundred miles apart from him, so all the major decisions were taken by my wife. I wasn't consulted. She didn't feel like she had to consult me even though I had joint custody...
(30:30)

My impression is that this man wants to be a father in the broader, social, sense, but feels there is barrier to achieving this. He feels that he has no 'rights' that enabled him to fulfil the roles required to be a father. The implication is that men who are separated from their children could be prevented from being a father as carer, and forced into the narrower sense of father as progenitor against their will. The very fact that this man seems to feel hard done by is evidence that he values being a father as carer much more than being a father as progenitor, and yet he starts by saying that fatherhood is primarily biological.

The explanation for this may be that by emphasising biological fatherhood, separated fathers are able to carve out for themselves a unique status – *the real father* - that depends on a unique genetic connection and therefore cannot be usurped by any other man. The status of ‘genetic father’ cannot be lost over time or space. It is fixed and enduring, in a way that a social relationship is not, and it cannot be taken away from them. In the absence of sustained social contact, the genetic connection becomes a lifeline. As such, a separated father may use the genetic connection to reconstruct himself as a father as progenitor in light his ability to be a father as carer being undermined.

Interestingly, a participant in one of the sperm donor groups also expressed this idea independently. He had stated quite clearly a number of times that he thought the genetic connection was insignificant, and all that really mattered to fatherhood was ‘doing the father thing’. However, he thought that he would start to think of the genetic connection differently if he was faced with losing contact with his children.

FGD2/02 If my children were not genetically linked to me it wouldn't worry me until such point that the mother decided she was going to take them away...until that point it wouldn't worry me (313:319)

In light of this, we might start to form the hypothesis that the overt significance of the genetic connection might be inversely proportional to a man's ability to be a father as carer. At least, we might be prepared to think that the significance of the genetic relation only comes to the fore, and is overtly

recognised, if and when a man's social relationship with his child is threatened. Much like a climber who only starts to think of crampons as important if and when he falls, the genetic connection might come to be more highly valued if and when it is the only thing connecting a man to his children. So, whilst many men are willing and able to endorse a broadly social conception of fatherhood, they are unwilling to let go of the idea of fatherhood as a biological construction altogether because, in some cases, to do so would undermine their own claims to being a father.

This explanation might also be closely related to beliefs about the perceived transient nature of social fatherhood versus the fixed and enduring nature of biological fatherhood, and this is also linked to the overriding desire to protect the interests of the child. Some of the men expressed worries about a child being fathered by a succession of the mother's 'lovers', and argued it is important for a child to have the kind of stability which could only be guaranteed by a genetic father. The worry with these kinds of claim is that they were made by men who have chosen to take part in this kind of research and who have fought for access and custody to their children. It is most likely true that the children of these men would be offered stability and an enduring relationship – they want to be fathers. However, it is also quite clear that not all biological fathers feel this way, given the fact that many men are happy to have nothing to do with their offspring (see Section One), and thus it is ostensibly not the case that genetic fatherhood is a *guarantee* of an enduring, stable, relationship. This aside, we can see these claims as supporting the view that the men are concerned with promoting the best interests of the child,

and these men think that this can best be done by offering stability through a fixed and enduring relationship with the genetic father. The genetic father is picked out uniquely because it is considered less transient than social fatherhood, and not contingent upon other factors, such as a continuing relationship with the child's mother.

FGA2/02 what happens if the woman had a child with one man and then has a succession of partners, which one of those succession of partners has the right of being called a father to that child

FGA2/03 ...if it's just a series of lovers then, then it's a series of lovers and none of those people are the father, but if someone lives with that child and acts in a fatherly way to that child, .e. erm emotional support and financial support then you almost earn the rights that should be afforded to a child's father (755:757)

There is also a sense in which these men may be staking a claim for future involvement with their child based on past roles, and a sense that it would be unjust for another man, the mother's lover, the *usurper*, to move in and take over from him. This will be discussed in more detail in the next chapter, in which we look at the sources of paternal rights; the claim that paternal rights are earned through the discharge of responsibility; and the idea that justice dictates they cannot then be taken away.

The post-hoc rationalisation

Finding an explanatory hypothesis for the same phenomenon in the IVF groups requires more interpretation and speculation. Little explanation is

available to be gleaned from the data, and so what follows is very much interpretative and speculative. My feeling is that the need to construct fatherhood in biological terms may be driven by the fact that the men who have been through IVF have undergone a stressful and invasive intervention, which impacted upon both themselves and their partners. Moreover they have gone through this in order to have genetically related children. It is known that fertility treatment tends to be driven by the female partner (Baber & Dreyer 1986; Lorber & Bandlamudi 1993), and these groups supported that, with many of the men claiming that they were not overly concerned with having children and that they took/take part simply to satisfy their partners. One participant went so far as to say that he actually did not want children at all, and was taking part in the treatment against his wishes, purely for an 'easy life'.

FGE1/01 ...I turned round to the counsellor a few weeks ago...and I said 'I don't want a child'... I have no interest, I really do not want a child...'. [My] wife does, she wants to be part of the group, the set with children, the family...[W]e had another discussion this morning before I came here and I said 'I really do not want a child', and we'll have this discussion when I get home again... [I]t's my wife, she wants a child, so for an easy life you go with the wife, so we probably will go through with it (118:122)

In light of this, it seems plausible to suggest that attributing high value to the to the father as progenitor the men are engaging in a kind of *post-hoc* rationalisation, in which they come to value that which is sought in order to make sense of, and justify, their struggle. The question they may have been asking is 'if fatherhood does not depend on a genetic connection, then why am I going through all this?'. To go through IVF treatment simply for the sake

of one's partner, or for an 'easy life', is not likely to carry one through the process. Arguably, more justification is needed to endure such a traumatic and stressful event, and this justification is found by attaching great significance to the biological connection between a father and child. The men can say to themselves 'I am enduring this because it is *important* to have a genetically related child – without it there would be something missing'.

Rethinking the value of biology to fatherhood

When we take these findings at face value it would be easy to conclude that there is a clear distinction between valuing the father as carer and the father as progenitor model, but it is far from clear that it is an either/or situation. Firstly all of the participants, without exception, even those who most forthrightly asserted the value of biological fatherhood, claimed to value social fatherhood, and considered being a father as carer the definition of a *good* father. Furthermore, when we look at the reasons given for valuing biological fatherhood we find that it is valued because it facilitates a relationship between father and child. It seems that biological fatherhood is not valued for itself, but because it is considered important in promoting a paternal relationship.

The genetic connection is valued because it is thought to comprise a natural bond, which is inevitably sustainable and enduring. Thus, it is valued because it is believed to be instrumental in promoting a good paternal relationship between father and child. It is valued because it is instrumental to promulgating the image of 'normal' familial functioning, which is considered

desirable. It is also valued, if my explanatory hypotheses are correct, because it serves as a lifeline to connect fathers to children in a unique way, thus protecting the relationship from usurpers, which is considered to be in the child's best interests. It also serves as a means of *post-hoc* rationalisation in order to justify certain acts and choices, which would otherwise seem unjustifiable.

All of these reasons for valuing fatherhood as a genetic construction are directed towards establishing or maintaining a good relationship between father, child and family. Thus it seems to be valued for what it does and for what it can be used to achieve, rather than for what it is. It is valued as a means, rather than as an end in itself.

Summary

It is clear that being a father as carer was valued more highly than being a father as progenitor. This is evident both from explicit statements concerning the former, and an in-depth analysis of the reasons for the valuing of a genetic connection, concluding that the genetic connection is predominantly valued instrumentally as a means to becoming a father as carer.

What this suggests is that of these two kinds of fatherhood, the father as carer is a more morally meaningful concept. By that I mean it is a normatively rich concept, a state of 'doing' for which one can be credited. It is valued because it involves effort and commitment. It is valued because it is congruent with the function of fatherhood being *for* the child. When this is contrasted with the

father as progenitor we see a relatively flat concept, one which is simply a state of 'being' achieved through a relatively selfish, or at least self-fulfilling, act, which 'even a frog can do'. It is less valued because it is easy to attain, it involves no commitment or effort. Where good and successful fathering is constructed in terms of looking after the interests of the child, in 'being there', the kind of fatherhood that involves a positive choice and commitment is more highly prized.

The fact that greater moral value is placed on the father-as-carer model is also evident in the way in which being a father as carer is viewed as an end, a goal, and how being a father as progenitor was valued predominantly as means to achieving that goal, strengthening the paternal relationship, and ensuring that the child is happy and comfortable.

Key points:

- All participants highly valued the father as carer model, because this was perceived to be the best way of being a good father, where 'being a good father' is seen as being a person who raises and cares for a child.
- Many participants also valued the father as progenitor model, but this value was instrumental, insofar as a genetic connection was believed to facilitate and secure a man's position as a father as carer.
- The high incidence of valuing the father as progenitor in the non-resident father and IVF groups may be explainable in terms other than a simple valuing of biology. The

genetic connection can be seen as a fixed and enduring lifeline, or it can become valued through post-hoc rationalisation.

Chapter 15 - The Responsibilities and Rights of Fatherhood

As we saw in Section Two, attempts to construct a theory of paternal rights and responsibilities have been variously grounded in: genetic connectedness - in terms of property (Engelhardt 1996; Hall 1999) or causal agency (Callahan 1996; Nelson 2000); intention (Hill 1991); simple causal agency (Fuscaldo 2006) and, the welfare of the child (Locke 1993). These theories, however, generally fail to accommodate the complex nature of fatherhood, and are liable either to cast the net too wide (making too many men fathers of the same child) or too narrow (failing to attribute 'fatherhood' to those men to whom it 'should' be given), and are thus challenged on the basis of a *reductio*.

What we saw in Section Two was that the theories examined could adequately capture fatherhood in a particular context, but tended to fall short when the context changed, and thus were challenged on the basis of a *reductio*. What is interesting is that for a *reductio* to be valid, and to be more than simply glorified question begging, we need more than the theorist's opinion. We need to have good reasons for supposing that the consequences are truly absurd, and not just the flight of fancy of the author. If we reject a genetic account of fatherhood on the basis that we would not consider a gonad donor to be the father of the recipient's offspring (Bayne 2003), then we had better be pretty sure that 'we', in general, actually *do* think that it *would* be unacceptable to hold the donor responsible and consider him a father. It is with this in mind that I present below the main findings of the

project on the men's views about the nature and origin of paternal responsibilities and rights.

Discussion about rights and responsibilities tended to elicit normative notions of fairness and justice, where the rights of men who had *earned* fatherhood were championed. Generally speaking the men were not able to explicitly talk about and express their thoughts about the origins and sources of paternal rights and responsibilities, and this is understandable given that to do so would require in-depth philosophical reflection about complex ethical issues. To overcome this, their views had to be coaxed out of them. This was done primarily by exploring scenarios in which men either refuse responsibilities or seek rights, and then asking participants to evaluate these actions. As they made moral judgements I sought to explore their reasons for those judgements, by way of challenging them, offering counter examples or simply asking them to give more explanation. This produced a great deal of data that required interpretation, and to some extent beliefs about the sources of paternal rights and responsibilities had to be read into the data rather than simply extracted.

This chapter will begin by exploring the perceived nature of paternal responsibilities and rights, and will draw considerably on the previous two chapters in showing that paternal responsibility is predominantly constructed in terms of responsibility to ensure the child is able to develop fully, and paternal rights in terms of freedoms to make decisions that facilitate that development. It will go on to examine how participants thought paternal

responsibility and rights are generated, drawing on normative constructions of moral responsibility, which are both generic and specific to fatherhood. It will also look at the men's perceptions of father's rights as contrasted with the rights of the mother and the child, and the ways in which this impacts upon men's views on the relative importance of paternal interests.

The nature of paternal responsibility

The men tended to intuitively endorse a broadly Hohfeldian conception of responsibility as duty.³⁶ Rather than seeing responsibilities as separate entities that exist in their own right, the men tended to see responsibilities (or duties, to use the Hohfeldian term) as something that is specifically owed from one party to another (Hohfeld 1923). Thus, a father's responsibilities are 'duties' which are owed to the child. Using a Hohfeldian framework, paternal responsibility can be split into three distinct parts: the subject (the father, to whom the duty belongs), the object (the child, to whom the duty is owed) and the content (to be a father, to act in a fatherly way, to do what is expected of a father). The nature of paternal responsibility is such that, by definition, the object is the father and the subject is the child. What is less certain is what the content consists of, and what the factors are that determine which man should count as the object. We will look at both of these in turn.

Paternal responsibility was ostensibly conceived as the obligations or duties that come with fatherhood, and should be distinguished here from the legal concept of 'parental responsibility' as set out in Section One.

³⁶ I would like to thank Sue Gibbons for bringing this to my attention.

Essentially, paternal responsibility was seen to consist of fulfilling the roles dictated by the kind of father you are. Thus, the responsibilities of a father as carer are to provide the three different kinds of support that were identified as comprising the father as carer role: emotional, developmental and practical. By virtue of being a father as carer a man was considered to be obliged to care for and about a child, to be a friend, and to form an enduring relationship. He is obliged to take steps necessary to ensure his child develops, is educated and taught how to live, to provide for the material needs of the child, to protect that child, and ensure that it is fed and sheltered.

By implication, the responsibilities of the father as progenitor are minimal, his role being simply creation where there is no prior duty to procreate, and this would seem to entail that a father as progenitor has no obligations. However, this seems inconsistent with claims made by most of the participants that a progenitor has a fiscal responsibility for his offspring, consisting of a minimal obligation to pay for the upkeep of a child he sires.

FGE1/04 I think that from the moment of sex the responsibility begins and, and if you're not prepared to take that responsibility then you shouldn't be having sex that may lead to a child, and I don't think a man can ever opt out of his financial responsibility ... (226:226)

One key point to note is that when participants talked about the responsibilities of a father as progenitor, they made no claims to the effect that his responsibilities extended to an obligation to be a father as carer but focused exclusively on financial support. There are two issues to explore here. The first is the reason why a progenitor would have financial obligations

and, second, why does a progenitor have no obligation to become a father as carer. To tackle the latter issue first, the answer seems to lie in a belief that an obligation to become a father as carer cannot be enforced. To be a father as carer a man must love a child, and a person cannot be forced to love. As one participant put it, to be a father as carer a man has to want it.

FGA1/04 but if a man doesn't want, I mean being a being a parent, being a father, you've got to want to do that. Forcing somebody to do that means they're going to do a crap job, that they're literally gonna do it by the book and it's not gonna be an enjoyable and fulfilling process for the father or the child really, and is that necessarily what you want for a child? [Y]ou want both parties to actually want to do this (176:176)

It makes no sense to think that a progenitor might have an obligation to become a good father, a father as carer. If he does not want to be a father as carer he cannot, by definition, become one.

As we have already seen, the responsibilities of a father as progenitor were perceived to consist of an obligation of financial maintenance, but it was also the case that the men tended to want to resist constructing fatherhood in terms of fiscal obligation. Being a good father was thought to be much more than simply providing money and material comforts. What we begin to see is that fiscal obligation is not so much a responsibility *of* fatherhood *per se*, but a responsibility that often goes *with* fatherhood - but is distinct from it. It is associated with fatherhood, but it is not 'fatherhood' (as carer). In other words, providing financial support for a child is not enough for a man to be

fulfilling the responsibilities necessary for him to be called a 'father' - the way that 'fatherhood' is most meaningfully understood.

Associated with this view is a moral condemnation, as a 'bad' father, of a man who simply provides for the material needs of a child without forming a father as carer relationship. Such a man *is* a father (as progenitor) but he is not *being* a 'father as carer'. He is a bad father, and he is not fulfilling the sorts of obligations such that he could properly be called a father in a morally meaningful sense.

We have, then, two kinds of responsibility emerging; the responsibility of the father as carer, which is a responsibility to love and to nurture, and the responsibility of a father as progenitor, which is to provide financially. For ease of reference I will refer to the former as the 'paternal responsibility' because they refer to the responsibilities associated with the more meaningful and more highly valued form of fatherhood, and to the latter as the 'material responsibility' because they refer to obligations that are not distinctly paternal, but are associated with the less valued, less meaningful form of fatherhood.

We shall now examine how these different kinds of obligation are thought to come about.

The origin of material responsibility

Fiscal obligation, or 'material responsibility', tended to be associated with the men's conceptions of general moral responsibility, and were rooted in notions

of causality, risk and foreseeability. Their general notions of moral responsibility mirrored almost exactly the 'common sense notion' put forward by Fuscaldo (2006), and focussed on the obligation a person has to take responsibility for the foreseeable consequences of their voluntary actions.

FGA2/02 ...[the biological father] has knowingly done an act that would lead to a child, so cause and effect type of relationship

FGA2/03 it's just a consequence of action, that's all it is, whether those consequences were intended or not it's still

FGA2/04 they were foreseeable... (520:524)

The 'foreseeability' clause was key here, as some participants suggested that it is not fair to hold a man financially responsible for a child who was accidentally conceived. Where contraception is used, some men suggested, a man should evade fiscal obligation in virtue of having taken steps to prevent conception. By far the majority of the men rejected this, claiming that even if you are using contraception you still know that conception is a possibility. Embedded in this is normative commitment to the notion of moral accountability. In the absence of coercion, a man is considered to be justly held accountable for his actions, and can justly be required to pay (financially, in this case) for the consequences. In this way, material responsibility is constructed in terms of making a conscious choice to have sex, and in doing so you tacitly accept the risk that pregnancy might occur. You take a gamble, and you are bound by the result.

FGA1/02 ... I think the choice was yours and it was made the moment you slept with that person. Now that's the time ...when in your mind you're taking on that risk aren't you?

FGA1/01 Yeah

FGA1/02 It's kind of like 'tough luck' really later on, if it doesn't work out for you, cause you've actually taken that risk from day one...if you're gonna play Russian Roulette...one time there might be a bullet in there and you have to accept that risk. (77:81)

Material responsibility, then, seems to be a causal responsibility, where a man is held responsible for financially supporting a child in virtue of having caused it to come into existence. Given this view is associated so strongly with the father as progenitor model, this position seems to lend itself to a genetic causal account of material responsibility, like that evinced by Callahan (1996) or Nelson (2000). However, the men's views on the responsibilities of sperm donors makes it unlikely that they endorsed such a view.

Sperm donors were considered to have no material responsibility. The act of giving away one's sperm was seen as an important mitigating factor, as was the act of receiving it on the part of the recipients. The justification for this view was that sperm donors are altruistic, and it is not fair for them to have responsibilities to a child that they have 'given' to another man to raise.

FGA2/02 the act of donating sperm...negates your rights and responsibilities in the future...[I]f you were doing it from an altruistic perspective you're thinking of some couple somewhere, where the father for whatever reasons cannot... get the woman pregnant...and you're looking to...let them have a child, and as far as the world can see that is their child and

that's what you're trying to do... (1052:1052)

One donor described his motivation for donating sperm as purely altruistic, and made an analogy between donating sperm and donating blood. In doing so he explained why he considered himself to have no responsibilities to any donor offspring, and at the same time downplayed the significance of the genetic connection to fatherhood. All he shares with the child is a bit of his DNA, and this is not reason to think that he has an obligation to the child.

FGD1/01 the reason I gave sperm is for the same reason that I'm a blood donor, and the same reason that I'm a marrow donor...and that's why I gave sperm... I think I have the same relationship with the children that were born...with my sperm, I have the same relationship with those children, the same responsibilities and rights and, whatever, with those children as I do for the person who's got a bit of my marrow, which also means they've got a bit of my DNA (517:517)

What this emphasises is that is it not the genetic contribution which was considered to generate material responsibility, but the 'causal role' that a man plays - the act of engaging in an activity from which conception might occur, whether that is having sex or accepting sperm from a donor. One way of looking at this might be to say that up until the point the recipient couple decide to use the sperm there is no child, and it is only the decision to use it that is the pivotal factor in the child coming to be born. It is, then, only the decision made at the point of no return that is the relevant causal decision, and the only people who make that decision, at that point, are the recipient couple, or the couple about to have sex.

The origin of paternal responsibility

FGS1/03 if you're the genetic father and you walk away or you split up you're financially responsible. If you're the father [as carer] you're just as responsible because you've had the responsibility of that child from the belief that it was yours up to that moment in time you discovered it wasn't, so you're just as responsible for it whether you're the genetic father or not (603:603)

Paternal responsibility is described as 'paternal' because it is the kind of responsibility such that, should a man discharge it, he would be considered a father as carer, which is a more distinctly paternal role and encompasses everything that is expected of a good father.

These responsibilities include financial support, but also all other aspects of the three kinds of support that make up the role of the father as carer. The source of these obligations has already been hinted at above, where it was observed that those kinds of obligation cannot be enforced. It is, then, the case that these responsibilities were thought to be generated through the act of accepting them, of recognising and identifying oneself as a father as carer, and by playing the father as carer role. These views were drawn out during discussions in which the groups were encouraged to reflect on a man who, upon finding out he is not the genetic father of a child he has been raising, decides to walk away. Generally speaking, such an act was met with moral condemnation, and the reasons given were that this man had accepted fatherhood and had formed a relationship with his child. The formation of this

paternal relationship creates an expectation and dependence in the child, and it would be a cruelty to end such a relationship.

FGS1/01 ...if...the father believes the child is his own and then he discovers...his wife had an affair and that the child...is fathered by someone else, I think ...that the current financial arrangements should stay in place. I'm troubled by this notion that because it's not you biological son you...should suddenly change because of the fact that the child isn't your own...[E]motionally that must be quite devastating but I think that kind of...goes against the kind of whole conception...of fatherhood in the sense that...it's not just a biological thing, it's about your relationship and your commitment to that child, and I would be a bit disturbed if...the bloke finds out the child isn't his own, [and] then decided he was gonna withdraw... (519:519)

In essence, once a man chooses to be a father as carer and identifies himself as such, he has an obligation to his child(ren) to remain as such. This, again, is evidence that this kind of fatherhood is not seen as dependent, in any way, upon having a genetic connection. This obligation is ostensibly generated by the expectation and dependence that the man has created in the child. It is akin to the obligation of promise keeping. By accepting the father as carer role, and allowing the child to identify him as 'a father', the man has created an environment in which a child can legitimately expect him to act like a father. By acting like a father he commits himself to the child, and by committing himself to the child as a father he is promising 'I will be there for you', and this promise is felt to be binding.

An interesting question must be asked here. If a man is obliged to maintain this relationship once he accepts it, but he cannot be forced into it, what

happens to a man who simply decides to renege on his promise and walk out on child he has been raising? The answer, first of all, is that such a man would be morally condemned. The participants were generally sympathetic towards a man who had been duped into thinking the child was his, or who discovers that his partner has cheated on him, and it was accepted that such a discovery would be devastating. However, the shock, or the breakdown of the relationship between the man and the woman, should not, it was thought, impact upon the relationship between the father and the child. Thus, a father as carer who walks out on a child upon discovering the lack of a genetic connection might be sympathised with, but would nevertheless be condemned for allowing this discovery to affect his relationship with his child. This is because his fatherhood, his meaningful, valued fatherhood, is not based on a genetic connection, but on his social role and the relationship that had already been formed.

FGA2/04 I think some fathers have actually...been behaving as fathers, and then they decide actually 'I'm out o here', yeah, but I've always thought that one wasn't right...'ooh, well I'm gonna have no financial responsibility for this one', and...I would suggest 'I'm sorry mate...you have been the father of this child, for all intents and purposes...you still are', you can't suddenly say 'oh I've changed my mind...because it's not genetically mine... (882:882)

Secondly, if a man should make the decision to break his promise and leave, he could not be made to continue to love and care for the child against his will, and so he cannot be made to continue to fulfil his responsibilities as a father as carer. However, he can and should, it was felt, be made to fulfil his financial responsibilities, his 'material responsibility', to the child. Accepting

the father as carer role was felt to include the obligation of practical support, which includes financial support.

FGS1/02 you rattled about...compulsory...action to support that mediation, but are you saying you're gonna pass a law to make a man love a child?

FGS1/03 no, not love a child, this man has to all intents and purpose been a good father, looked after the child... and then all of a sudden it's not his and...he says well 'hah, there' s nothing anywhere that says I've gotta pay for it'

FGS1/02 but if your mediation says that 'oh yes you have, you've gotta carry on supporting the child' you're imposing on him an emotion...

FGS1/03 no, not an emotion...a fiscal responsibility (654:660)

There are two plausible explanations for this view, and it is not clear which is the case, though likely as not it is a combination of both. The first may be that the established father as carer has obligations, and the financial obligation is the only one amongst the many that can be enforced – hence it should be. The second explanation may be that to withdraw financial support would leave the child in financial need, and so, for the sake of the child, the man should continue to contribute financially. It was acknowledged that leaving in itself would be harmful to the child, but it was also acknowledged that forcing a man to stay in a paternal relationship against his will would be more damaging. The obligation for continuing financial support might be, then, the minimum that a man can, and should, do in order to fulfil the obligations he incurred when he identified himself as a father as carer. In giving this financial support

the man is not playing a paternal role. Thus, doing so does not make him a father (or at least it does not make him a good father), but rather it is simply a matter of fulfilling the one obligation which can be fulfilled in the absence of a paternal relationship.

It is noteworthy that both kinds of obligation, material and paternal, are based on choices and voluntary actions, and once generated neither is thought to be avoidable, although the way in which they are incurred differs considerably. The former is an obligation that is incurred indirectly, through freely choosing to accept the risks associated with sexual activity. As such, whilst it can be taken on voluntarily, it is often incurred regardless of choice, intention or voluntary acceptance, which shows that these men occupy a moral space that is intuitively opposed to intentional accounts of fatherhood, such as that put forward by Hill (1991). In contrast to this, *paternal* obligations can only be incurred voluntarily – one chooses to obligate oneself to a child, which is more aligned with Hill's account.

The content and origin of paternal rights

FGT1/06 I think like anything you've got to earn it, like the more time you put in with the child then the more rights you've got to them and the more rights you have over what they do because ...you pay the most attentions to them, you give them the most support, so you should have the most say over them... (369:369)

The content of paternal rights was never explicitly discussed, but tended to be assumed. What can be gleaned from the general discussions is that the men

tended to construct the rights of fatherhood in terms of the entitlements, which fathers would expect to have, and which are necessary in order to be a father. These included rights of access, the right to make decisions about care, schooling, healthcare etc. However, it was implied, in the way in which the men thought paternal rights should be allocated, that the father as carer is the kind of father who should have those rights associated with fatherhood.

FGA2/02 what happens if the woman had a child with one man and then has a succession of partners, which one of those succession of partners has the right of being called a father to that child?

FGA2/03 I think the one that acts the most like that...if it's just a series of lovers then it's a series of lovers and none of those people are the father, but if someone lives with that child and acts in a fatherly way to that child...then you almost earn the rights that should be afforded to a child's father

FGA2/02 ...is it a case of the male...that is prepared to say 'I would like to be considered as that child's father', is that the one?

FGA2/01 almost like adoption in a [way

FGA2/02 [yeah (755:763)

Generally speaking, it was thought that a man could not have any rights as a 'father' unless he discharged the responsibilities of a father. In this way, the rights of a father are *earned*. Driving this view seemed to be a sense of fair-play and justice, combined with the belief that being a good father and raising a child is a fundamental good, a desirable and enjoyable experience. This

combination led to the basic argument being put forward, again and again, that a man acquires the rights of a father when he demonstrates he is capable of, and willing and committed to, fulfilling the responsibilities of a father as carer. By contrast, a man who has not put in the effort, not shown commitment to a child, and not shown that he has the child's interest at heart, should not have, and does not deserve, the rights associated with fatherhood.

FGA1/02 I think of a father really as somebody who actively takes on the responsibility of being in a child's life, being... responsible for...its social, moral welfare, financial welfare and just making that decision to be actively involved in it's life really. So I think once you've taken on that responsibility you should be granted the rights essentially, you should have the rights of access, the rights to be consulted when decisions need to be made (27:27)

It is also noteworthy that it was commonly thought that the longer a man is involved with a child the more rights he has. A long-term commitment to a child is worth more, rights wise, than a short-term relationship, and the longer the relationship goes on, and the more time the man has spent 'being a father', the more entitlement he has to claim the rights of fatherhood.

FGP1/01 ...someone...might be in this relationship believing he's a [genetic] father for ten or twelve years and then discover the truth, or it might happen within several months. So the longer it goes on the more rights I would say he has to maintaining the responsibility and entitlement as a father (313:313)

This suggests that the rights of a father are not thought to be absolute, and that a man does not have rights as a father in virtue of what he is, but in virtue of what he does. His rights are not inalienable, but are contingent upon him

fulfilling certain responsibilities that his role demands of him. Fatherhood, then, tended not to be seen as a package in which rights and responsibilities came together as standard. Rather, fatherhood tended to be constructed first as a set of responsibilities (determined by the role), which must be fulfilled before rights are earned.

There was, however, a dissident view, which was spearheaded by one non-resident father in particular. He, and to a lesser extent other men in this group, felt that paternal rights should be granted to a man simply in virtue of being a progenitor. This view was that inalienable paternal rights are acquired through the act of procreation, which emphasised a genetic conception of fatherhood.

FGS2/05 ...but if a [genetic] father walks away for a while, those rights, I feel, should never be taken away from him, he should continue to have those rights (1681:1681)

FGS2/05 ...if...[the genetic father]...wanted to come back [after an absence]...how can you transfer that right, how can you take it off him...[M]y view was [if you're a] mass murderer, you know, in prison, never coming out, you've got no rights to see that kid you know, you're a maniac, you've killed twenty kids already, you're never going anywhere near that child, and I think that's probably one of the very few times you can actually sever that right away from that person (1637:1637)

This man's view included a claim that a father as progenitor could legitimately walk away from a child, and then return years later and claim his rights as a father. This is so much at odds with the prevalent view that rights must be earned that it implies there might be a specific motivation behind it, and the most plausible explanation seems to be the same as that offered for the

valuing of the genetic connection described in the previous chapter. This man had fought for many years, and spent an awful lot of money, on gaining access rights to his children upon separation from his partner. This involved long periods of time in which he was separated from his children, and thus unable to 'earn' a father's rights. To endorse the view that a man only acquires and retains paternal rights by fulfilling paternal responsibilities, would (or would have) undermined his own claims to paternal rights, and this is something that he was unwilling to do. For him, the genetic connection is the only constant, and in that situation it makes sense to construct fatherhood around that.

In addition to this, there was a very real sense that many more of the men felt that a father as progenitor had a legitimate interest in his progeny. This ranged from property-like claims that a genetic child is 'half mine', to claims that they would simply feel hard done by if they were prevented from having access to their biological children. As was the case with the valuing of biological fatherhood this was not backed up by argument but, rather, appealed to a gut feeling, or intuition, that a biological father should be with his offspring. The absence of good argument to support these feelings might tempt a philosopher, such as myself, to disregard them, but I find I cannot. The fact that the men could not explain or justify their 'attraction' to their biological children does not make it any less real, or lessen its impact. This finding suggests that it is just a fact that some men feel bound to their genetically related children, and would thus be harmed in a very real way should they be refused contact.

There was one other scenario in which some men felt a man could have paternal rights without first discharging paternal responsibility, and that was when a man did not know about the child. If a pregnancy was kept secret, or a man had no way of knowing about it, then upon finding out that the child existed some of the men felt he had a right to 'become a father'.

FGT2/05 Well he's proving that he wants to take responsibility for it and he is the genetic father so again you've got the two out of two type scenario, he seems to show that he would have the better characteristic to be the father, he's taking responsibility so he's on, he didn't know and he's saying well this is my child, I want to care for it now and (I'm also) [the] genetic parent

FGT2/03 Yeah 'cause he didn't know when he walked out about the child

FGT2/05 Especially if that woman kicked him out

FGT2/01 It's not irresponsible if he walked away just because he was breaking up the relationship so when he came back (he is genetic) and wants access then he should be given access

FGT2/03 (... that's more responsible than a lot of people)

FGT2/05 Yeah but to come back to...[the child] and accept, okay I wasn't with this person for a while...but I still want to see my child

It is noteworthy, however, that one of the main reasons the progenitor is considered to be able to enter the child's life is that he is considered to have the characteristics of a good father, in virtue of wanting to be a father after

such an absence. In a roundabout way, this view is driven by a wish to provide the child with best father possible.

Others felt that such a man had been wronged, but that he could not claim to be a father because he had not 'been there'. They sympathized, and condemned the mother for not giving him the chance to be a father, but many felt that there could come a point when it is too late to be part of a child's life as a father (insofar as the child might reject the man, or it might not be in the child's interests to have a new father figure), and this point rests upon a general belief that the interests of the child should always override the rights of a father.

Paternal rights and the overriding interest of the child

One of the most prominent themes to emerge from the discussion on father's rights is that they are, and should be, curtailed by the interests of the child. In other words, the right of the child to have his/her interests protected trumps any rights held by a father, of any kind, actual or putative. This view reflects that prevalent in the courts, the 'welfare principle', which we looked at in Section One, and other studies have identified in parents 'a strong moral imperative' to place the needs of dependent children before their own. Ribbens McCarthy *et al.*, for example, argue that this imperative is justified in light of the child being constructed as an 'innocent', and childhood as a state that is separate from adulthood which lacks capacity and agency (Ribbens

McCarthy, Edwards, & Gillies 2000)³⁷. Many men in this study referred to children as 'innocents' who did not deserve to be harmed. In light of this construction, this prioritising of the child might be explained in terms offered by Cahill, who argues that individuals will tend to follow social rules and conventions in order to maintain their moral social selves (Cahill 1990; Cahill 1998). Thus, fathers, recognising children as innocents in need of protection, would naturally be drawn towards offering that protection, but this is done to preserve their own self-image as a 'moral person' rather than a selfless desire to offer protection. This ties into the idea that men who wish to be 'good fathers' will tend to adhere to the father as carer model, and follow the norms and conventions that will enable them to be 'seen' to be good fathers, and thus retain the self-image of a 'good self' through being a 'good father'.

However it is played out, and whatever its motivation, whether selfless or selfish, the welfare principle means, simply, that in any decision made by the court (or *ex hypothesi* by an individual), the interests of the child should be placed before those of any other interested parties. This means, in principle, that even if a man has every right to have custody of a child, and be named as the child's father, if granting this would be contrary to the child's interests, it should not be done. We saw in Section One how the courts make decisions in light of what is perceived to be the best interest of the child in any particular circumstances, and this way of making decisions was generally endorsed by the men in the groups.

³⁷ See also (Kitzinger 1990).

FGA2/04 ...what we're being asked here is if suddenly somebody comes along and says 'ah, I'm actually the biological father, I want a genetic paternity test... now it's my child, not your child'...does his biological interest override your custom and practice interest, as the father?

FGA2/03 I think it definitely shouldn't, I think...the thing first and foremost [that] should come before all this is...what's important to the child and for the child should...outweigh anyone's rights, or what they feel in a selfish way they own or have with regards to that child...(783:789)

Whether we were discussing whether a father as progenitor should be able to take over from an established father as carer, or discussing whether or a not a man should be able to walk out on a child he had been fathering upon discovering that he was not genetically related, the interests of the child were always thought to come first, even if this impacted negatively on other stakeholders.

FGE1/03 I think it's easy to say '...it's not my kid', you know, 'why should I have anything to do with it'... but I just think that... if I was to find out that...my children weren't genetically mine...after fathering them for two and a half years, things would change, of course they would, and I'd be a fool to think that I wouldn't have demons playing with my mind...and perhaps I might take it out on the children as well, you know, but the fact is, at the end of the day, it's not the children's fault

FGE1/04 hmm

FGE1/01 very true

FGE1/03 it's not their fault, it's the parent's fault... however it arises, whether it be the mother, the father, whatever, but it's not their fault, it's our fault, and they...they deserve

better, they don't deserve for people to desert them...(327:333)

In putting the interests of the child before everything else, the men endorsed the welfare principle; and it follows from this that any enduring framework of paternal rights and responsibility, or general principle governing what kind of man has the best claim to paternal rights and/or responsibility would, and should, be disregarded. Decisions should be made on a case by case basis, looking at the individual circumstances of the particular child involved. A father's rights may well, in this case, be sacrificed for the sake of a child, but this, as one resident father noted during a break in the recording, is something that a *good* father would willingly accept.

Welfare: Means and ends

Although all the men endorsed a general principle that put the interests of the child first, there was disagreement over what counted as being in a child's interests. Generally, all the men agreed that it was in the child's interest to have a loving, involved father as carer, who need not be genetically related, and that it would be better for a child have no father around than a bad, disruptive one. However, there was disagreement and uncertainty over whether or not a child needed a man around at all, and whether a child needed a *father* as opposed to a male role model.

FGE2/03 it's like you said before about the rights of the child are paramount so as long as the child gets enough love and care and brought up in, you know, the right environment it doesn't really matter whether it's a mother and a father or two mothers or two fathers, but I

guess...one has to ask yourself you know, philosophically is it best to have a mother and a father figure um, you know, from society's point of view (or the) nuclear family, that's a different question completely about what's best for the child (514:514)

Some of the men thought that a child needed to know its biological father, and some thought this was vital to a child's sense of identity whilst others thought it was medically necessary. In much the same way as all the participants valued the father as carer model but some men thought that to be a father as progenitor was the most efficacious route to this, all the men also valued the prioritising of the child's welfare; they just disagreed on how this was best achieved. In both cases, the end is the same, but the means are different. Given their basic values, it seems likely that in the face of evidence showing that it is in a child's interest to know its biological father, or that it is in a child's interest never to see its biological father once they have been separated, the men would change their views accordingly. However, it is not clear if, or how, the men's beliefs about what is in a child's best interest were influenced by their own needs and preferences. It would be easy for many men to justify any kind of behaviour by claiming that they are behaving thusly to protect the interests of the child. Disentangling this issue would be a worthy topic for future research, but it is beyond the scope of my present project.³⁸

Paternal rights and the impact of the maternal burden

FGD2/01 ...I think even though it takes two to tango, to have a child, I can see why it's the mother's choice to continue it or finish it, because at the end of the day she's got to carry the

³⁸ I hope, in the future, to go over my data again with a view to looking specifically for patterns of belief about the child's best interests against the men's experiences and personal interests.

burden for the next nine months, she's left holding the baby as it were (382:382)

Paternal rights were also, to some extent, thought to be justly constrained by the rights of the mother in some circumstances. This circumstance was pregnancy, during which the woman's right to determine its outcome was thought to trump a man's interests in having, or not having, a child. This came to light during discussions about a man's relative lack of power in determining the outcome of a pregnancy. It was generally thought to be quite right that a man cannot insist that a woman either terminate or carry a pregnancy to term, although many men expressed a wish for men's opinions to be taken into account more than, they believe, they generally are at the moment.

FGS1/04 ...the woman should understand...that the father has some rights in this as well. I think it's wrong to just allow the woman to decide how she wants to (decide on it), even though she's the one who's got the burden of actually giving birth... (857:857)

This view tended to be associated with a respect for the bodily integrity of women, and a moral resistance to the idea that a man could legitimately force a woman to do something with her body that she does not want. There was also a sense in which the men felt that pregnancy was very much the domain of women, and that it is something that, as men, they could never understand. The argument here seemed to be that because a man can never understand what it is like to be pregnant, he will never be in position to be able to make a decision concerning its outcome. His lack of understanding makes his input a non-starter.

FGP1/02 ...in my situation, I wanted a termination, I was eighteen years old and sure as hell wasn't ready to be a dad...but I don't think I would have had any right to force her because, at the end of the day it's her body and...it's something as men we can't really experience, carrying another life inside you, it's something I think you could only ask a woman to explain...I don't think you could give...the potential father, the same control the potential mother would have...I think you'd have to leave the situation as it is and give the woman final control. [Y]ou can't make her carry a pregnancy through, if you try and do that she might do something stupid and God knows we don't want that, and forcing her to terminate, like I say, there is just that link of carrying another life inside you that I don't pretend to understand, and I don't think any man would pretend to understand... (153:153)

There was a feeling that the impact of pregnancy, the maternal burden, both emotionally and physically, justified a woman having more rights over the outcome of the pregnancy. In contrast, a man's role and burden during pregnancy was thought to be minimal. The missing premise, which was never made explicit, is that by doing this work a woman earns rights in a way that a man cannot, or at least not during pregnancy.

FGE1/02 ..I think that is the males' role within fertilisation, is basically fairly straightforward, I do feel that women, they do have much more to go through...and I think that almost gives them greater rights, in a way, going back to this first scenario, you know...the fact that they can decide to abort it, cancel it, morning after pill, the impact on a women's life and body is much greater than a man, you know...they therefore should retain greater control over their lives and their bodies (204:204)

This combination of the greater maternal burden, the need for a woman to be in control of her own body, and the belief that pregnancy is something that men cannot understand, led to the general endorsement of the view that a

mother's rights over the child during pregnancy trumped those of a father. Even though many of the men wanted to have more of an input, and more control, they believed that this was something they simply could not have.

Some participants did think that because a woman has these rights, men should not be held responsible for the way they are exercised. Some men raised arguments, without prompting (and others in response to prompting), that endorsed a view associated in the literature with feminist writers such as Brake (2005) and Sheldon (2003), arguing that if a woman makes the choice to keep a child she makes that choice alone, and she should not be able to make the man support her in that choice.

FGA1/01 ...surely with the sole responsibility for making a decision as to whether the child is born or not, then she is making the decision... of bringing that child up on her own [2: hmm], erm...if it's purely a financial thing then I think that it's unfair for that to be brought about by erm somebody from, you know, a night that you had many moons ago when, you now, you had protected sex but it was an accident, she's kept the baby, erm and then all of a sudden she's hit hard times and she's come to find you out because she needs money... (99:99)

The men who supported this view did so because it was thought to bring equality into the allocation of paternal rights and responsibility, and equality is something that the men tended to prize. There was also a sense in which this view was perceived as more just, and it was considered fair to make women solely responsible for their own choices, rather than to exercise their right to choose and then expect a man to pay for it.

In opposition to this, many men felt that women do not always have a free choice in this matter, and that various cultural or religious restrictions might prevent them from having a termination. Alternatively, a termination might simply seem so abhorrent to a woman that it is simply not an option. These men tended to use notions of 'responsible sex' (which involves finding out about your partner's beliefs beforehand), to make appeals to the 'naturalness' of the choices we have, and to emphasise the claim that if you have sex you are knowingly and willingly risking a pregnancy, including the risk of being powerless to determine, and bound by, its outcome.

FGP1/01 I understand the argument and in some ways I respect the argument...but I don't agree with it because ...if we choose to have sexual relations with a person we should be responsible for the outcome...even if she chooses not to take on the termination, 'cause termination's not a natural thing...most women, when they have that life growing inside them...can't cope with a termination...it's part of their natural instinct... I think that if the woman chooses to have the child the responsibility is both of theirs because they chose to have sex in the first place... (229:233)

Once pregnancy is over, and the child is born, it was generally felt that the mother's rights should cease to trump the father's. Once the natural inequality of pregnancy is over, the rights of the father and mother should be equalised. When both mother and father put in equal effort, and where their contribution can be equal (such as is not the case during pregnancy), there was thought to be little justification for the mother having more rights to or over the child.

FGT1/03 I just sort of agree...that...[fathers] should have the same legal rights to the kid as

the mother should and that the mother shouldn't have, sort of, total control over the children's...future...[I]f the parents are split the father should have the same rights as the mother, because they've got equal responsibility for the birth of the child, and the welfare of the child...

Jl OK, does anybody agree with that or =

FGT1/06 =I agree with it, the man should have equal rights as the woman if they're willing to put the effort into the child...(596:604)

In this way, we see parental rights being continually renegotiated and constructed on a rolling basis. Past actions are not relevant, as the mother's greater burden during pregnancy was not thought to count for anything once the pregnancy is over. She does not build up 'credit'. Rights are earned 'on the job', so to speak, and cannot be stored up to be 'cashed in' at a later date.

Summary

The main finding of this chapter is that father's responsibilities are constructed as the obligations that come with fatherhood, and that different duties are associated with different kinds of fatherhood. The obligations of a father as progenitor and a father as carer are different, the former consisting of a duty to provide material support, whilst the obligations of the latter involve fulfilling the role of the father as carer. In this way, the duties of a father as carer are indistinguishable from the role itself, and we see that the role of the father as carer is simply constructed out of a number of responsibilities that exist for the sake of the child. The father as progenitor has a material responsibility, and

this is thought to be generated causally, appealing to notions of moral responsibility similar to those advocated by Fuscaldo (2006). In contrast, paternal responsibility has to be accepted, and is generated by creating a need and expectation in a child, and thus can only be incurred by a father as carer. Paternal rights were generally thought to be earned through the discharge of paternal responsibility, and it tended to be the case, with some exceptions, that the rights a man has as a father are thought to be directly proportional to the amount of commitment and effort he puts into being a father as carer. The child's welfare was thought to legitimately trump the rights of the father (or mother), although there was disagreement over what counted as being in a child's interest. Finally, the rights of the mother were thought to trump those of the father during pregnancy, but once a child is born it was felt that the mother and father should enjoy equal rights as parents.

These findings suggest that a single theory that bases a generic 'paternal responsibility' on one particular kind of relationship, whether genetic, causal or intentional, will generally be too simplistic. They suggest that paternal rights are not generally conceived as an on/off, either/or phenomenon, but something that can be earned to a greater or lesser degree and is dependent upon the kind of father you are, the interest of the child, and the rights of the mother - the impact of which will depend upon the gestational stage. It is particularly noteworthy that the kind of responsibility that is causally generated was not associated with fatherhood in its most meaningful sense, and that causing a child to exist was not thought to be capable of generating a responsibility to be a father (as carer), but only a responsibility to provide

financially. This suggestion of a distinction between enforceable 'material responsibility' and voluntary 'paternal responsibility' separates economic responsibility from paternal responsibility, which is reminiscent of a distinction made between economic responsibility and paternal status made by Dowd, in which genetic fatherhood brings economic responsibility but where paternal status would depend upon the satisfaction of other criteria, namely satisfying the requirements of the 'father as carer' role (Dowd 2005).

Key Points

- The responsibilities of a father as progenitor differ from those of father as carer.
- Progenation was associated with economic, or material responsibility, whilst being a father as carer was associated with paternal responsibility, which is simply responsibility to fulfil the role of that kind of father, which includes providing emotional, developmental and physical support,
- Paternal rights were thought to be earned by discharging paternal responsibility.
- A father as progenitor was not generally thought to have any specific rights, although the men felt that a progenitor had a legitimate and real interest in being with his progeny and should not be denied access.
- The welfare of the child should always come first, and trumps the rights of the father.
- The rights of the mother during pregnancy trump those of a father, by virtue of her extra burden.

Chapter 16 – Summary discussion

Fatherhood emerges from the focus group discussions as a complex negotiation of rights and responsibilities, existing predominantly for the sake of the child. To say 'I am a father' might mean either 'I am a progenitor' or 'I am a carer', but either way it is to define oneself as having played, or continuing to play, a role in the creation, or in the raising, of a child. Both kinds of fatherhood are perceived to be based on a causal relation; in the case of the former this is sexual and/or procreational activity (natural or assisted), whilst in the latter it is voluntary acceptance of a particular kind of relationship and responsibility. The father as progenitor is constructed within a narrative of biology, and the father as carer is constructed within a narrative of responsibility.

Despite some variance in the views between groups, particularly with respect to factual beliefs (for example, about how the best interests of a child are pursued), there was a great deal of convergence on certain normative principles, to the extent that they can be thought of as being axiomatic. Regardless of factual beliefs, and despite variance in personal experience and perspective, the participants tended to endorse a number of general normative axioms that underpinned their claims. These axioms come, in their reasoning, prior to factual belief. For example, the normative claim that a child's interests should always be promoted remains constant, whilst different factual beliefs about how this is best achieved will vary, leading to differences of opinion. The normative claim that a man should be held responsible for

the foreseeable consequences of his voluntary actions remained a constant but, arguably, different factual beliefs about what counts as a foreseeable consequence will affect how that axiom is applied in practice. Identifying these axioms enables us to see what is morally important to the men, as it looks beyond their factually contingent beliefs to their basic moral values and intuitions. It is these intuitions that drive their beliefs and give their claims normative content. I have called these 'axiomatic values', because they were consistently appealed to as final reasons in themselves. They were taken by the men, for the most part, as self-evident, and represent the common, core moral values of the participants. It is these values and intuitions on which their normative claims about fatherhood are based, and they represent the basic premise of an argument for which no further justification is offered. These axiomatic values and their implications have been drawn out in detail in the three preceding chapters, and the purpose of the final chapter of this section is to summarise and make them explicit.

Morally meaningful fatherhood

Where fatherhood was constructed as something that is morally meaningful, it was constructed within a narrative of responsibility and father as carer ideology. The kind of fatherhood that is aimed for is 'new fatherhood', reflecting the findings of other studies looking at fathering culture and conduct (Craig 2006;Lloyd 2003;Smeaton 2006;Van Dongon 1995) and generally supporting the claims made by most commentators that 'new fatherhood' is currently in vogue, at least in terms of men's aspirations.

Thus, the first axiomatic value claim to make explicit is the general claim that morally meaningful fatherhood lies in social relations and not biological fact. Fatherhood is, as one participant put it, *more than just a drop of sperm* (FGT102, 233:233). It requires commitment and effort, sustained social contact during which emotional bonds are forged. This kind of fatherhood can be described as morally meaningful, not just because it was morally desirable, but also because as a concept it is normatively loaded. This kind of fatherhood requires a choice and a commitment. It exists 'for' the child. To fail as a father as carer is to fail *morally*, to fail to discharge a responsibility – *to fail another human being*. The relationship between a child and a father as carer is thus conceived essentially as a moral relationship, constructed in terms of love and duty. Semantically, the participants also referred to a progenitor as a 'father' but, as we have seen, the concept of the father as progenitor is not normatively loaded in the way that father as carer is. One cannot be a morally good or a bad father as progenitor – one can either procreate or fail to procreate. It is a state of biological being that does not exist 'for' another, and in this way it cannot be considered a moral relationship. Although fatherhood by procreation was valued, it was valued instrumentally as a means to securing a social bond between a man and child. Whether or not the men realised it themselves, it was valued as a means, and not as an end in itself. Thus, the first axiom is:

1 *Morally meaningful fatherhood is constructed in terms of social bonds and role fulfilment, and not in genetic connectedness.*

Genetic interest

Although the men defined morally meaningful fatherhood in terms of social relationships, many of them still thought that a progenitor had a legitimate interest in his progeny. This interest did not tend to be expressed in terms of rights (with the exception of some non-resident fathers) but rather in claims to the effect that it would be unfair to exclude a progenitor from a child's life without giving him a chance to be a *father*. Little more was offered in terms of explanation for this intuition. It was taken for granted that a carer had more rights than a progenitor, but a progenitor did have a legitimate interest in his offspring and it was considered unfair to exclude a man from the life of his progeny without good reason. This unfairness might be explained in terms of the emotional impact of such exclusion on a man who wants to play a part in his progeny's life. Most of the participants believed that men had a natural/biologically motivated tendency to want to be involved in the life of their progeny, and they clearly felt that it would be unfair to deny this to a man who has such a feeling, unless there was a very good reason to do so. Good reasons tended to be considerations of the child's welfare, and bad reasons were characterised as the mother's wishes as a result of acrimonious separation. This leads to the second axiomatic value claim, which is:

2 *A progenitor has a legitimate interest in his progeny and, all other things being equal, should not be excluded from his progeny's life.*

Moral responsibility

The men tended to endorse a traditional model of moral responsibility, believing that a man should be held morally responsible for the foreseeable consequences of his voluntary actions. This general axiom mirrors that advocated by Fuscaldo, who argues for a causal account of parental responsibility on the basis that we are “morally accountable for the intended and unintended reasonably foreseeable consequences of our free actions” (Fuscaldo 2006) p10. The men’s general endorsement of moral responsibility being causally determined translated into a general axiom that responsibility for a child is causally generated. However, the kind of causation required was thought to be wide and varied. Firstly, a man could become morally responsible for a child by causing it to exist. This could be by natural or assisted means, covering both sexual intercourse and being the instigator/willing male participant in an assisted reproductive project. Secondly, a man could become responsible for a child by choosing to accept responsibility and creating a relationship of dependency. Thus, the men tended to think that a man could be held morally responsible for the consequences of having sex, of accepting donor sperm, or of accepting responsibility for a child. However, these different causal factors were thought to give rise to different kinds of responsibility. The ‘physical’ fact of causing a child to exist was thought to generate a material responsibility, that is, the responsibility to provide for the material needs of the child, which fundamentally equates to a fiscal obligation. The social fact of causing and propagating a relationship of need and dependence, of voluntarily accepting

fatherhood, was thought to generate a paternal responsibility, which equates to an obligation to continue to be a father as carer to the child. Thus, the third axiomatic value claim is:

3 *A man is morally responsible for any child that results as a foreseeable consequence of his voluntary actions, including sex, embarking on an assisted reproductive project, and choosing to accept a fatherhood role. Causing a child to exist generates a material responsibility, whereas causing a paternal relationship generates a paternal responsibility.*

It is important to view this axiom alongside another, which initially seems to be inconsistent. The men did not think sperm donors should have any responsibilities or rights towards their progeny, despite them being causally implicated in a way that would suggest they are responsible. The reasons they tended to give were that sperm donors give their sperm for somebody else to use, implying that the use of the sperm is the recipient couple's choice and therefore not the responsibility of the donor. This view most resembles that offered by Munson, who argues that only the woman, as the last intervener, is morally responsible for the conception (Munson 1988). Other men thought sperm donors should be absolved of responsibility because of the contract they enter into; they only donate on the understanding that they will not have any responsibility. Others thought it was because donors altruistically give their sperm to help infertile couples, and that it is unfair to expect them to accept responsibility for a child resulting from altruistic action. Regardless of the reasons offered, the men took pains to insist that a sperm

donor should not be held responsible for a child in a way that gives them paternal responsibilities or rights, giving rise to the fourth axiom:

4 *Sperm donors are not morally responsible for their donor progeny, and are not fathers in any morally meaningful way.*

Earning a father's rights

Where father's rights are concerned the majority view was that paternal rights have to be earned by discharging responsibilities, and this is based on a deeper moral conviction that positive rights have to be earned by discharging the associated responsibility; which leads to axiom five:

5 *positive rights have to be earned through the discharge of associated responsibility, and so a man can only acquire paternal rights by discharging responsibility.*

The mother and the child

It was generally acknowledged that paternal rights had to be considered in relation to the rights of the mother and of the child, and that the rights of the mother and child impacted upon the rights of the father.

Generally, it was thought that the rights of the mother and father should be equal, and neither should trump the other once a child is born. However, when the child is still gestating, the mother's right to determine the outcome of

the pregnancy trumped the father's right to have or not to have a child. This was because during pregnancy the burden on the mother is greater, and also that the rights of the mother to bodily integrity outweighed any right of the father. This gives rise to the sixth axiom:

6 The rights of the mother and father are equal when the child has been born, but the rights of the mother override those of the father during pregnancy.

For these men, a child's status as an innocent, undeserving of harm, gave it a moral priority that trumped every other consideration. This ties in closely to the idea that good fatherhood was considered a state that exists 'for' the child, and sees the child as the most important stakeholder in any decision regarding custody or parenthood. It is important to note that this was not a moral prioritising of the wishes of the child, but on the best interests of the child – whatever that is. This leads us to the final axiom:

7 The welfare of the child trumps all other considerations, rights and interests, and the best interests of the child should always be promoted.

A small signpost

The purpose of this section was to present the findings of an empirical investigation aiming to explore the values and conceptual apparatus that men employ when considering fatherhood as a normative construction. The plan was to document these values and concepts so that they could be used in the stead of the concepts and intuitions that are assumed by philosophers working the area. In this, I feel it has been relatively successful. The empirical investigation has enabled me to identify seven key normative concepts and values that lie behind the men's views. So long as these values are respected, it seems less likely that any theory based on them will be rejected on the basis of running counter to moral intuitions. In essence, these axiomatic value claims represent the key common moral ground that is shared by all the men. The challenge now is to use these axioms to inform a normative framework of fatherhood that is both philosophically and logically coherent, morally defensible, and practically useful. It is to this task that I turn in the next section.

Section five – A framework for paternal responsibilities and rights

Introduction

The aim of the preceding sections has been to give an overview of fatherhood as a social, legal and philosophical construct. We have seen in Section One how fatherhood is constructed differently in legal and socio-cultural terms, and we have seen how this has the potential to cause confusion about the role of the father in terms of what a father is expected or obliged to do, and what he can expect in terms of rights – leading to what we might call a ‘normative crisis’ in fatherhood. In Section Two, we explored the attempts of some philosophers to contribute to the solution of this ‘crisis’, and we saw that the theories they offered were dependent upon a variety of ‘intuitive’ value claims, and empirical and conceptual assumptions. Given that the philosophy in this area is very much influenced by what theorists consider intuitive, I suggested that rather than construct a theory and then test it against the intuitions of an individual critic, a more productive method might be to build a theory around empirically tested intuitions – and so long as that theory is logically consistent, fit for purpose and empirically plausible, it is more likely to be the kind of theory that people can adopt in practice, because it will work with concepts and values that are familiar and acceptable to them. To this end an empirical study was conducted to examine laymen’s normative constructions of fatherhood, examining the basic moral values that motivated their claims and exploring what they valued in fatherhood. Section Three outlined the qualitative methodology used, and Section Four presented and discussed the

findings, eventually focussing on seven key axioms that comprised the men's common moral intuitions. It is the purpose of this final section to outline and defend a normative framework for the acquisition of paternal rights and responsibilities, which is informed by, and thus sensitive to, those common intuitions.

It seems necessary to begin by explaining how this framework was constructed, as this will impact upon the way it is presented. I will not be presenting it in the standard philosophical way by means of a 'Socratic' dialectic, making several small claims that are logically binding and then finally reaching my conclusions and unveiling a complete theory. I cannot pretend to have come to my conclusions in this manner, and so I cannot present it in this way. Rather, the framework I will present is the product of a reflexive process, the result of immersing myself in the literature and having 'encounters with experience' (Ives 2008). The framework emerged as it became clear what the men valued, and it became equally clear that any theory I produce would have to accommodate those values. After these encounters I once again immersed myself in the philosophical literature and tried to find ways that these values could be accommodated in a single account that was logically coherent. This framework, then, is the product of an iterative process, similar to reflective equilibrium, in which I have moved back and forth between empirical data and theoretical constraints. Discussions with my supervisors, various conference delegates and other academic colleagues and friends have been equally a part of this process. The point to make is that this theory was not created or deduced; rather, it

'evolved', and I will present it here in its evolved form. Its justification will be its consistency, its intuitive force, its empirical plausibility, and its usefulness.

To begin, let us re-cap the axiomatic value claims that the framework has to accommodate. They are:

- 1 *Morally meaningful fatherhood is constructed in terms of social bonds and role fulfilment, and not in genetic connectedness.*
- 2 *A progenitor has a legitimate interest in his progeny and, all other things being equal, should not be excluded from his progeny's life.*
- 3 *A man is morally responsible for any child that results as a foreseeable consequence of his voluntary actions, including sex, embarking on an assisted reproductive project, and choosing to accept a fatherhood role. Causing a child to exist generates a material responsibility, whereas causing a paternal relationship generates a paternal responsibility.*
- 4 *Sperm donors are not responsible for their donor progeny, and are not fathers in any morally meaningful way.*
- 5 *Positive rights have to be earned through the discharge of associated responsibility, and so a man can only acquire paternal rights by discharging paternal responsibility.*

- 6 *The rights of the mother and father are equal when the child has been born, but the rights of the mother override those of the father during pregnancy.*

- 7 *The welfare of the child trumps all other considerations, rights and interests, and the best interests of the child should always be promoted.*

For the sake of clarity, and in order to respect the conceptual distinctions that were made by the research participants, it is also necessary to make some terminology clear. From now on, the term 'moral fatherhood' will be used to refer to the kind of morally meaningful fatherhood that is encompassed in the father as carer model. A man who is a father as carer has moral fatherhood, and will be referred to as a 'moral father'. The term 'causal fatherhood' will be used to refer to any man who causes a child to exist in such a way as to give him material responsibility for the child. Such a man will be called a 'causal father', and he may be a causal father by progenation, or by (co)initiating and completing an assisted reproduction project. A 'material father' will be a man who does not have moral fatherhood but nonetheless discharges his material responsibility for a child, and he will have 'material fatherhood'. Given these distinctions, a man can be causal father, a material father and a moral father. He could be a material father but not a moral father, and he could be a casual father but neither a material nor a moral father. However, a man could not be a moral father without also being a material father, because it is part of the

concept of 'moral father' that he provides material support, and so by becoming a moral father a man also becomes a material father. I will also continue to make use of the terms 'paternal responsibility' to refer to the responsibilities of a father as carer and 'material responsibility' to refer to the responsibilities generated through causing a child to exist. 'Paternal rights' will be used to refer to those rights characteristic of moral fatherhood and will include, amongst others, the right to contact with the child, the right to make decisions concerning the day to day care of the child, the right to have a say in the child's schooling and healthcare, and the right to determine the child's place of residence.

Chapter 17 - The framework

The route to moral fatherhood

To begin with, the bones of the framework must be set using the axioms identified in the empirical project. This will produce a skeletal theory that will then need to be filled out, made logically coherent and defended against objections as they arise. To this end, the starting point must be to adopt a broadly causal account of moral responsibility, in keeping with axiom three, and say that a man is morally responsible for any child that is conceived as a foreseeable result of his voluntary actions. This would exclude responsibility for a conception that was the result of forced sex, 'sperm-jacking'³⁹, or coerced/involuntary participation in an assisted reproduction project, but would include voluntary sexual activity of any kind and voluntary participation in an assisted reproduction project. In order to accommodate axiom four, and exclude sperm donors from moral responsibility, the causal role must be that of the 'prime mover'. This starting point most resembles the causal account offered by Munson (1988). It accepts an account of moral responsibility very similar to that offered by Fuscaldo (2006) and Callahan (1996), but rejects the idea that sperm donors have parental responsibility for the child.

This causally generated responsibility is an inescapable moral responsibility; although it can be thought of only as a material responsibility to provide material support for the child (given that causing a child to exist cannot generate a responsibility to be a moral father).

³⁹ Sperm jacking' is term used to refer to sperm being taken (or stolen) from a man without his knowledge and used to conceive.

Here, we run into philosophical problems, because it is not clear how being responsible for the existence of a child can lead to a responsibility to provide for a child. Brake points out, correctly I think, that responsibility for a child's existence does not equate to a responsibility for a child's *neediness* (Brake 2005), and this makes a similar point to Blunstein's 'gap in the argument' (Blunstein 1979). The fact that a child has needs that require satiation cannot itself lead to a responsibility to satiate that need on the part of the creator – and given that the empirical data is silent on this problem it has to be resolved philosophically⁴⁰. One solution is to think of the material responsibility not as owed to the child, but to the child's mother, or to whoever takes on responsibility for the care of the child. This responsibility would be more akin to a duty of compensation for the costs of raising a child than a direct duty to provide for the child. Here, the word 'compensation' is not intended in the punitive sense. It is not meant to imply that someone is being punished for doing something they should not have done or neglected to do. Rather, it is simply a matter of dealing with the consequences of one's actions. If I am painting my house above my neighbour's open window, and I know there is a good chance that if the tin of paint falls over it will most likely fall through the window and onto my neighbour's Persian rug and I choose to take this risk, then in the event that this occurs I have a duty of justice to compensate my neighbour for the costs that are incurred.

Placing a duty of compensation upon a causal father is justified because when a man becomes a causal father he creates a child that has needs, and

⁴⁰The empirical data is clear that a causal father has a moral material responsibility, but it is not clear to whom that responsibility is owed.

someone must meet those needs (unless we are to say that we can leave a child to fend for itself, which seems impermissible). Any person, whether the mother or the state, who satiates those needs incurs costs, and it is clear that whilst the causal father is not responsible for the fact that a child is needy, he is partly responsible for bringing that need into the world. Although Brake (2005) is correct in saying that his actions do not cause the child to be needy, a needy child is a perfectly foreseeable consequence of his actions. Given this there is no reason why anyone other than the people who brought that need into the world should be required to meet the costs of that need. Thus, a causal father has a duty of compensation to pay his fair share of the reasonable costs incurred through raising any child that he causes to exist. This duty would be owed to whoever is raising the child. If this person is the mother then he owes his fair share to her, and if it is the state then it is owed to the state (note that in the latter scenario the mother would owe the other half to the state, just as she would pay the other half if she looked after the child). Even if, as Sheldon argues, the state has an interest in raising unwanted children that would justify it taking on for itself the responsibility and cost of raising unwanted children (Sheldon 2003), this would not mean that the causal father has no obligation in the first place, but only that he has been relieved of that obligation by the state.

The key point to note here is that material support is owed not to the child because the child is needy, but to the mother (or other carer) to compensate her for the cost of bringing up a child. The fact that the child is needy means that *somebody* has to look after it. Because the progenitors (both male and

female) caused this child to exist, it is they who have the responsibility to meet the cost of this need (as opposed to the state or a person on the street). If the mother raises the child alone then she is meeting this cost alone, and the causal father is obligated through a duty of justice to compensate her for his fair share of those costs. If he is not, or is unwilling to be, a father as carer, he is minimally obligated to compensate the mother for half the expense of raising the child alone. This move allows axiom three to be accommodated without falling down Blunstein's (and Brake's) gap.

The implications of this, in terms of causal fatherhood and the responsibility entailed, are clearly spelled out if we consider an instance of sperm jacking, as illustrated by Abegg who describes a Greek myth recounted by Plato in the *Symposium* (Abegg 1984). In this example, the Goddess Penia causes the God Poros to ejaculate in his sleep, and she then uses his semen to make herself pregnant. In this case Poros played no active causal role in the child's conception, and he would not be a causal father. He would owe no duty of compensation to Penia because he has nothing to compensate her for – the conception was entirely her doing and thus she has sole moral responsibility for bringing a needy child into the world. Thus, she could expect no-one else to contribute to the costs of meeting that need. The fact that Poros is the child's genetic father makes no difference. If, rather than being 'sperm jacked', Poros had intercourse with Penia, Poros would have been a causal father and would have had a material responsibility by virtue of his causal role.

Brake, who objects to the notion of a duty of compensation, argues that whilst a man might plausibly have a duty to compensate a mother for the immediate costs of pregnancy, he would not reasonably have an obligation to compensate her for the costs of childcare, because raising the child was her choice (Brake 2005). This is based on a parity argument, in which Brake argues that men should be given the same opportunity to opt out of parenting responsibilities as women have. Given that the mother could have chosen to have an abortion, her decision to take the pregnancy to term was a decision to have a baby. Thus, the man is partially responsible for the *pregnancy*, but not responsible for the fact that a child was born. It is important to note, straightaway, that this kind of argument was put to the men in the focus groups, and they rejected it outright, saying that when a man has sex he knows that he has no control over any resulting pregnancy. It is a foreseeable consequence of sex that if a pregnancy occurs the woman might choose to have the child against your wishes. It is, as it were, part of the package that you do not have a choice, and it was accepted that during pregnancy a woman has absolute control over that pregnancy (axiom six). I would extend this further, and argue that if I am causally responsible for that choice having to be made (termination or no termination), then I am equally responsible for the consequence of that choice. Consider a situation in which I am responsible for causing an accident which damages your spinal cord resulting in partial paralysis. You have two treatment options – risky re-constructive surgery which could either return normal function or lead to permanent paralysis, or safe stabilising surgery that would mean you stay in a state of partial paralysis but can still function with the use of wheelchair. Let's assume

you take the risky surgery option, and it goes wrong. According to Brake I could not be held in any way responsible you being permanently paralysed, because although I was the person who caused the initial damage, it was you, and only you, who made the choice to opt for the risky surgery. However, it seems perfectly reasonable for you to consider that I am at least jointly responsible because it was my action that forced you into a position such that you had to make a decision either way. Similarly, if I was kidnapped and given a choice by my captors between shooting my wife or shooting twenty other people who were kidnapped with me, it seems wholly unreasonable to hold me entirely responsible for whichever choice I make. My captor could not admit responsibility for his role in my having to make the choice (just as Brake admits that the causal father may be responsible for a woman actually becoming pregnant) but deny having any responsibility for the outcome of the choice that I make. My captor is at least partially responsible for whatever choice I make because his actions, at least in part, led me into a position such that I could not avoid making a choice either way. Any deaths that occur are on his conscience just as much, if not more in this case, as mine. The same seems to be true of a man who contributes to a pregnancy. The fact that the choice whether or not to carry a pregnancy to term is made by the pregnant woman does not mean that the causal father's (joint) moral responsibility for her *having to make that choice* is rendered null and void. And, given that he is jointly responsible for her having to make the choice, he shares responsibility for the consequences.

Moving on, it must be noted that discharging material responsibility is not sufficient for a man be considered a father in a morally meaningful sense. Draper has argued that any rigid association between fatherhood and fiscal (material) responsibility is in danger of producing a very “distorted and thin view of what it means to be a father” (Draper 2007b), and the conception of morally meaningful fatherhood expressed in axiom one supports this. Thus, on this framework, a causal father who only discharges his material responsibility is a material father, but not a moral father, and is able to enjoy none of the privileges that moral fatherhood brings in terms of paternal rights. This point is similar to one made by Dowd, who suggests that genetic fatherhood might generate economic responsibility but not relational rights, the latter being dependent upon satisfying a definition of ‘nurturing’ fatherhood - although I would substitute ‘casual father’ for ‘genetic father’ (Dowd 2005).

The framework must also accommodate axiom two. This means it must accommodate the axiom that a progenitor cannot be legitimately excluded from a child’s life (all other things being equal), and the best way to do this is, I think, to make use of axiom five. Axiom five states that positive rights must be earned through discharging associated responsibilities. A progenitor, if he is a causal father, has a material responsibility and it seems plausible to say that by discharging this responsibility he earns a right to be involved in the child’s life by having the opportunity to accept paternal responsibility and become a moral father. Thus, a causal father who discharges his material responsibility would have a *prima facie* right to have the opportunity to accept paternal responsibility and become a moral father. Conversely, a causal

father who does not discharge his material responsibility has no claim to be involved in the child's life⁴¹. In essence, a progenitor's right to become a moral father has nothing to do with biological status, and everything to do with his causal role and then his willingness to discharge the material responsibility that is already his. This means that a progenitor who is not a causal father, such as a sperm donor, has no rights or responsibilities. This move allows axiom two to be accommodated, as it gives a progenitor (as a causal father) a route into fatherhood, but this route is not dependent upon genetic connectedness, and can therefore accommodate axiom four because a sperm donor would not have that route (he is not, on this account, a casual father, and therefore has no material responsibility to discharge). Neither is it based on a standing right of a progenitor *as a progenitor*, nor on the interest of the child in having someone care for it. The only way to get the right is to accept the responsibility, and in saying that the right is earned by *accepting* the responsibility I mean that the responsibility must be willingly discharged. A causal father who technically discharges his material responsibility, insofar as maintenance payments are deducted from his pay-packet by the CSA, could not be considered to be accepting and discharging the responsibility because if the CSA ceased to pursue him he would cease to pay.

If a causal father has material responsibility he has a moral obligation to discharge it. Insofar as it can be considered an injustice to prevent someone from discharging a moral obligation, it can be considered an injustice to prevent a man from discharging his material responsibility. If this much is

⁴¹ An exception might plausibly be made in the case of a causal father who, through no fault of his own, such as disability, is unable to discharge his material responsibility despite a willingness to do so. Thus, his disability would constitute a mitigation which will be discussed more fully later.

accepted, a causal father should have a *prima facie* right of justice to be permitted to discharge his material responsibility. If this right is not exercised, and if a causal father refuses to discharge his material responsibility, then he should lose that *prima facie* right. This means that if a causal father rejects material responsibility when it is demanded of him, he cannot then demand a right to discharge it at a later time. In keeping with the paragraph above, a causal father can be taken to have rejected material responsibility if he refuses to accept and discharge it *willingly*. Even if monies are forcibly taken from him and paid to the mother (or the state), he cannot be considered to be discharging his material responsibility, and therefore cannot claim rights in virtue of his material 'contribution'.

It is the fact that a causal father has a *prima facie* responsibility that gives him a *prima facie* right to discharge it. However, this right is not a standing and eternal right, but more like a right of first refusal, which, once refused, cannot then be claimed as his due. This clause incorporates axiom two insofar as it gives a progenitor, as a causal father, the right to take on material responsibility and become a material father - but this right is not based on his genetic connection.

So long as a man is a material father, by virtue of discharging his material responsibility, he has the right to try to form a paternal relationship with the child, and thus become a moral father and earn paternal rights. However, until he does this he has no paternal rights. The material father's right to take on paternal responsibility can be seen as being like window that he can keep

open by discharging his material responsibility. As a material father a man has the right to keep the window open; or, more accurately, he has the negative right for the window not to be arbitrarily or unreasonably closed. If he steps through immediately, the child will be used to him and will grow up with him as its moral father. However, the child also has the right to close it (as do others on the child's behalf, such as state social workers or the courts), and that right trumps the material father's. In practice, it would most likely be the case that the longer a material father waits to accept paternal responsibility the less likely he will be able to do so without impacting upon the interests of the child, which would trump any right he has (axiom seven). It also seems likely that the longer a material father waits before stepping through the window, the more able and willing the child may be to close it for good.

In keeping with the conception of fatherhood as a collection of responsibilities, the route to morally meaningful fatherhood and the associated rights is to accept and discharge responsibilities. The majority of moral fathers most likely accept all of these responsibilities in one moment, or at least as matter of course over time. They are not outlined in this way to be representative of the reality of how men become moral fathers, but to illustrate how these various rights and responsibilities can be morally justified.

Feminist concerns

One important consequence of the framework so far would be that mothers are removed as the gate-keepers to their children, and willing causal fathers

are given the *prima facie* right to have access to their children and become moral fathers. This introduces a gender equality to the acquisition of parental rights and responsibilities, which would have a number of implications for women, as Burgess notes:

(Women) would have to give up their dominance over their children and acknowledge fathers as equal partners in parenting... They would find themselves...sanctioned...if they tried to impede contact...(and) prevented from moving too far away.....(W)omen would have to recognise that if they dice with becoming pregnant they risk having to accept their sexual partner, however casual, as their parenting-partner for almost two decades. Just as men who leave their condoms in their wallets now risk paying almost two decades of child support. (Burgess 1997) pp217-8

However, this framework does not give rights to fathers whilst tying the hands of mothers. The implication for mothers is that they would no longer be tied through their children to 'deadbeat dads', who show no real interest or commitment to their offspring, and turn up sporadically demanding their rights as fathers. Presently, through the genetic connection a man can maintain an involvement in the life of both the child and the mother by staking his claim as a genetic father. On the grounds of his genetic connection alone a man is entitled to pursue custody through the courts – and even though this is likely to be unsuccessful if he has shown no previous interest in the child, the experience is still likely to be distressing and intrusive. On this model, if the

causal father of a child refuses to discharge his material responsibility then he would have no claim *whatsoever* to be a part of the life of the mother and child. If a causal father meets his material responsibilities, but does not also take on paternal responsibility (meaning he does not look after the child, care for it, form a loving relationship etc.), then he is not a moral father and thus cannot claim any *paternal* rights. Whilst I strongly believe that this freedom to break away from 'deadbeat dads' or material fathers who expect paternal rights simply because they pay child support should be welcomed, I can also see that it comes at a price. In order to give mothers the freedom to distance themselves from 'deadbeat dads' we must also acknowledge that women cannot exclude men who want to be fathers to their children. I have argued that a man has a material responsibility towards a child he causes to exist, and that he is obliged to discharge, and in doing so he earns the *prime facie* right to take on paternal responsibility. Given this, if a man was denied the opportunity to discharge these responsibilities then, if denied the former he would be prevented from doing what he is obliged to do (discharging material responsibility), and if denied the latter after discharging the former he would be prevented from doing what he has earned the right to do (take on paternal responsibility) – both of which are, at least *prima facie*, unjust.

Such a trade off is not problematic in itself, and feminist writers have suggested a similar, although slightly reversed, trade. Brake and Sheldon have independently put forward two similar arguments to place fathers on an equal footing to mothers with regards to financial obligation, both arguing that an unwilling 'father' should not necessarily be forced to pay maintenance

(Brake 2005; Sheldon 2003). The argument, which has already been mentioned above, goes roughly as follows.

If contraception fails, and a woman becomes pregnant, she has the choice to terminate the pregnancy. Because she has the choice to terminate, in *choosing* not to terminate she is choosing to have the child. In essence, the woman has 'two bites of the cherry'. She can both choose to use contraception and then she can choose whether or not to terminate.⁴² Both Brake and Sheldon argue that if a man makes it clear he does not want to have a child, and yet the woman chooses not to terminate, she is making that choice independently. They then argue that it is not right to expect the man to be fiscally responsible for a choice that the woman made alone. This kind of argument has been examined, and challenged, above, but the point here is to see that, essentially, what both Brake and Sheldon are trying to do is introduce gender equality by giving men the same chance to opt *out* of parenthood that woman currently have. This, I believe should be applauded, and such a goal is certainly in line with the findings of the empirical project outlined in Section Four. The approach I have taken has the same result - to introduce gender equality - but I have tried to do this by proposing that men be given the same opportunity as women to opt *in* to parenthood, rather than the same opportunity to opt out. Contra Brake and Sheldon, this model does not give causal fathers the opportunity to opt out of material fatherhood, but it does give causal and material fathers the opportunity to opt in, or out, of moral

⁴² It is plausible to suggest that this choice is not without its limitations. Stigma or cultural taboos attached to 'girls who carry condoms' or abortion might well mean that a women's ability to make this choice is constrained. The point here is not that this choice is always free and easy, or even practically available, but that it is theoretically available. All other things being equal, a woman has 'two bites at the cherry', whereas a man only has one.

fatherhood. If they choose to opt in to moral fatherhood then they earn paternal rights, and if they opt out then they lose that right but their material responsibility stands.

The responsibility of moral fatherhood

Once the material father does opt in, and forms an emotional, paternal, relationship with a child he becomes a moral father, and in doing so he creates a relationship of dependency and expectation, which generates for him paternal responsibilities that are owed to the child. These responsibilities include, referring back to the empirical study, the obligation to provide emotional, developmental and practical support. Paternal responsibility, once generated, is morally inescapable, and by committing to a child as a moral father a man has an obligation *to the child* to continue as such. This paternal responsibility cannot, of course, be enforced, but the material responsibility that he also voluntarily accepted *can* be enforced, and this now ceases to be owed to the mother (or other party) as a duty of compensation, and is owed instead to the child; and will be owed for as long as the child needs it. This is owed not because of the child's need, but because by becoming a moral father a man has promised it to the child – and the responsibility translates, essentially, to an obligation to keep a weighty promise. The point I am trying to express have been made very well by Kaebnick, whom I quote at length:

...the man has effectively assumed parental obligations, by representing himself both to the child and to the world as the child's parent and thereby encouraging the child to become

dependent on him and perhaps making it less likely that any other man could take a parental role. Having assumed this role, it is in most cases in the best interests of the child that the relationship continues, in the same form. Of course, it would be counterproductive to adopt a social policy that forces the man to persevere in every aspect of a parental role – only a financial obligation can be maintained by force – but according to this line of reasoning, it seems that the man is still under a moral obligation to continue more than a merely financial relationship.

(Kaebrnick 2004) p54

So far, the route to moral fatherhood from causal fatherhood has been mapped out. A man becomes a causal father by being morally responsible for the existence of a child. In virtue of being a causal father he has material responsibility, which he has a *prima facie* right to discharge. If material responsibility is discharged, he earns the *prima facie* right to form a paternal relationship and by voluntarily accepting that paternal role he becomes a moral father, which generates binding paternal responsibilities. However, if accepting paternal responsibility is what makes a man a moral father, then it must be the case that a man who is not a causal or material father can become a moral father by doing just that. It is in this way that, for example an adoptive father becomes a moral father. Here, we accommodate axiom one, which states that morally meaningful fatherhood is determined by role fulfilment. By *being* a moral father – which simply is discharging paternal

responsibility – a man *becomes* a moral father, and therefore earns paternal rights.

Finally, axiom seven must be taken into account, and this can be done by including an overriding principle in the framework that any right on the part of the father is rendered null and void if its exercise would be detrimental to the child. Of course, this is not to say that any man in a better position to look after another's children can, or should, become their father; but that in cases of disputed paternity, or custody and access battles, a decision should always be made on the basis of what the child's welfare and not on the rights of the father (or any other involved party). Where paternal rights and the welfare of the child conflict, the welfare of the child must always trump the rights of the father. This framework can also be showed diagrammatically (fig. 6), where the various routes into the various forms of fatherhood are shown.

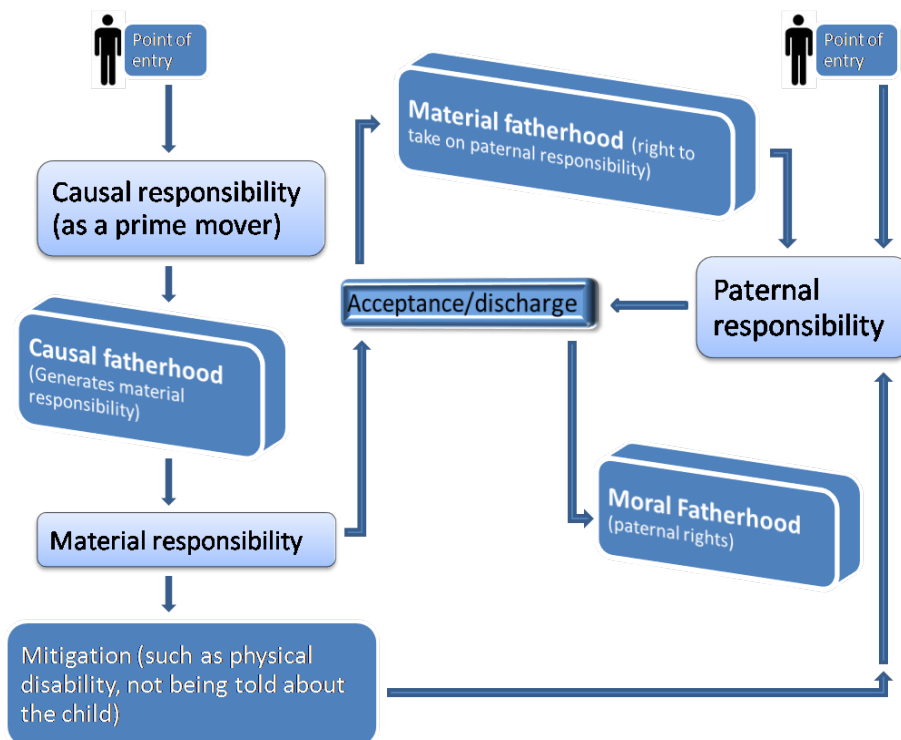


Figure 6. The framework in diagrammatic form.

I have made a point of including a 'mitigation route' in this framework, which would allow a man to become a moral father without having first been a material father. It is important to discuss this point, as the solution to many challenging cases might rest upon a satisfactory account of what counts as mitigation. I have already alluded, in footnote 41, to the possibility that a physical disability preventing a causal father from discharging his material responsibility might be such a mitigating factor. This is consistent with the notion that a person should not be held responsible for that which is beyond his control. If a causal father is otherwise willing to take on material and paternal responsibility, but because of a physical disability cannot provide materially for the child, it seems unreasonable to think that he should be denied the opportunity to be a moral father. Further mitigation might come in the form of not having been told about a child. If a woman conceals a pregnancy from a man, and he has no idea that he is responsible for the creation of a child, then he has no opportunity to discharge his material responsibility. Thus, the choice to fulfil his responsibility was not available to him. According to this framework, such a man would have been wronged by the woman insofar as she has taken away from him the opportunity to fulfil his moral obligation, and in doing so she has taken away his opportunity to become a material and a moral father. Thus, if/when he does discover the truth about the child, the fact that he has not, up until this point, discharged his material responsibility should not count against him. Essentially mitigations occur when the causal father has failed to fulfil his material responsibility through no fault of his own, either through lack of capacity or non-negligent lack of knowledge.

The Harry Potter example

This framework might be better explained by way of an example, and for this I turn to Harry Potter⁴³. Harry was born to James Potter. James was a causal father and therefore had a material responsibility, which he discharged. In doing this he earned the right to accept paternal responsibility, formed a paternal relationship and began to bond with Harry, earning paternal rights. James (and Harry's mother) then died, and Harry was placed into the care of the Dursleys. Uncle Vernon was given the opportunity to accept paternal responsibility for Harry, but did not do so. He did, however, accept material responsibility and thus became a material father to Harry, but not a moral father – preferring instead to be cruel. Given that he accepted material responsibility, and in that sense made a promise to Harry, he was obliged to continue to discharge it, and did so, regardless of the fact that he would rather get rid of Harry. In this sense, he was a good material father – but not a 'good father', because he was not a moral father. When Harry left to attend Hogwarts, Uncle Vernon ceased to support him materially even though he still had a responsibility to do so – and thus he failed to discharge his material responsibility, and ceased to be a material father, despite still having an obligation to be one.⁴⁴

⁴³ I thank the staff at the ETHOX centre for suggesting that Harry Potter would work well as an illustration of this framework. I had previously used an example from Star Wars, and the relationships between Luke Skywalker, Darth Vader and Obi Wan Kenobi.

⁴⁴ Thank-you to a Harry Potter purist (who will remain anonymous) for pointing out that Uncle Vernon does continue to support Harry during the school holidays for the first few years. However, in the later books, Harry tends to stay at Hogwarts or stay with friends over the Holidays.

Fortunately for Harry it turned out that he had inherited a fortune and did not need material support, and he boarded at Hogwarts. Later, Harry's Godfather, Sirius Black, entered the scene and eventually formed a paternal relationship with Harry. Although Harry did not need material support from his Godfather, Sirius played the role of a moral father to Harry, providing emotional and developmental support, which earned him paternal rights (illustrated in the books by the fact that only Sirius could give Harry permission to go on a school trip into the village).

The purpose of the Harry Potter example, which is familiar, if a little rough and certainly imperfect, is to show how the framework might work in practice; demonstrating how it allocates different forms of fatherhood, and different kinds of rights and responsibilities to the different kinds of fathers. The framework offered is coherent insofar as it does not involve any logical inconsistency; it is empirically plausible insofar as it does not appeal to any implausible or unjustified empirical claims; it is conceptually encompassing because it covers both paternal rights and responsibilities and shows the relationship between the two; and it has intuitive force because it is built from common values and moral convictions that have been empirically gathered – it is not just a personal confession. The final question to ask is whether it is fit for purpose – can it help to resolve complex cases and guide decisions in practice, and does it resolve them in a way that is consistent with those values on which it is based? To demonstrate that it can, I will now, finally, consider a number of challenging cases, and show how the application of this framework can help in their resolution. In doing this, I am not suggesting that the

framework can help to resolve these cases in a way that will be acceptable to all and will leave all stakeholders happy. I am saying that it provides a morally sound guide for decision-making, which is able to distinguish between different kinds of fathers and is able to rank them in terms of what rights and responsibilities they should have. However, making a morally sound decision is not the same as producing an outcome in which nobody is wronged, as we shall see. All a framework like this can hope to achieve is that whoever is wronged is not wronged in a morally arbitrary way.

Chapter 18 – An examination of some challenging cases

Some of the cases discussed in this chapter are real cases that have been resolved in the courts. In these cases it is useful to compare the actual judgement with the resolution offered by the framework, in order to illustrate how the framework differs from current thinking. Other cases are fictional, or at least not based on actual cases where a decision has been reached in the courts, and it is not possible to say with any kind of certainty what the courts would have decided, making comparison relatively unfruitful.

Contested Paternity⁴⁵

In November 2004 David Blunkett, the then Home Secretary, filed a paternity suit against Kimberly Quinn, his former lover. He claimed that he was the father of Quinn's two year old son, and further that he was also the father of her then unborn child. Quinn admitted having an affair with Blunkett, but denied that the children were his, and this claim was supported by her husband who asserted his paternity in both cases. Blunkett sought a court approved paternity test to be conducted on the child so that his paternity could be legally recognised. He also wanted a test to be conducted on Quinn's unborn child as soon as it was born. Quinn and her husband argued that the children belonged to them and wished to try to make their marriage work, which would be impossible with interference from Blunkett. Quinn's husband

⁴⁵ The Blunkett paternity case was reported widely in the media and, typically the facts of the case were disputed. I have described this case by looking at various media reports and taking those facts which were widely reported (BBC news 2004;BBC news 2005;Wikipedia 2007a;Wikipedia 2007b). To the best of my knowledge this is an accurate an account as possible without having access to the Family Court records, which is not permitted.

claimed further that even if Blunkett was the biological father, he was being vindictive in trying to assert his paternity, which would not be in the interests of the children.

First is the question of whether or not Blunkett is in a position to make a paternity claim. According to the framework, if Blunkett is the causal father, then he has a *prima facie* material responsibility. If he discharges, or is willing to discharge, that responsibility, then he has a *prima facie* right to form a paternal relationship and become a moral father. If Quinn knew that Blunkett was the causal father, then by refusing him the opportunity to discharge his material responsibility she wrongs him. This would be an injustice against Blunkett because he would be deprived of the opportunity to discharge his moral obligation.

If we assume that Quinn does not know, or is not sure, a paternity test would confirm who the causal father is, and thus would confirm whether or not Blunkett has a *prima facie* material responsibility. Given that it would be an injustice to prevent a causal father from discharging, or having the opportunity to discharge, his material responsibility, it seems that it would equally be an injustice not to allow a man to establish whether or not he has such a responsibility in the first place. Accepting this, given that there is no doubt that Blunkett *could* be the causal father he should be allowed to perform a test that would establish it either way. All things being equal, then, the test should be permitted. This is not because it is important to know the genetic truth, but because it is important to establish whether or not Blunkett has a moral

responsibility as a causal father. Should the test prove negative, then because Blunkett has been no kind of father to them, and has no *prima facie* responsibility, he has no claim to the children.

Should the test prove positive, this establishes that Blunkett has a *prima facie* material responsibility, and thus owes a duty of compensation to Quinn. If he accepts and discharges this material responsibility he earns the *prima facie* right to form a paternal relationship with the children – and this would be the case even if Quinn refused to accept the money. That fact that Quinn and her husband do not want Blunkett to discharge this responsibility, should it exist, might well have an impact upon the children, and thus must also be considered. However, it is important that there is an expectation that the Quinns should not act unreasonably, and any claim that it is contrary to the children's interests for Blunkett to be involved would have to be substantiated. Should they act unreasonably, and themselves traumatise the children as a means of excluding Blunkett (assuming Blunkett has a claim), then this unreasonable behaviour could justify them losing custody. Of course, it would rarely be in the interests of a child to be uprooted in this way, but it may be that such a 'threat' in principle might discourage unreasonable behaviour in practice. Unreasonable behaviour, here, would count as any behaviour which seeks to withhold contact without good reason or by exaggerating the possible consequences or creating a self-fulfilling prophecy.

This is straightforward in the case of the unborn child, but the issue is more complicated in the case of the two year old. There has been a period of two

years in which Blunkett has not discharged his material responsibility, and so at first glance he has not earned the right to form a paternal relationship. To deal with this problem it is necessary to determine why he has been absent. There are two plausible scenarios. Firstly, he could have known or suspected that the child was his from the start and refused to accept responsibility or refused to confirm his suspicions. If this were the case then he has already rejected his material responsibility, and in doing so he has lost his right to do so now. He is still liable to discharge his material responsibility, but he cannot claim any rights by virtue of doing so because he has already chosen to reject material and moral fatherhood. The other alternative is that he may have only just found out about the child. He may simply not have been aware of the pregnancy or he may have been told by Quinn that the child was not his and believed her – and his claim now is based on new facts that have just been made available to him. If this was the case then he is arguably not at fault for having not discharged his material responsibility. Accordingly, if he tries to discharge his material responsibility (and by ‘try’ I mean, to borrow Kant’s phrase, ‘a straining of all means’) as soon as he discovers that he is the causal father, then he can still enjoy the right to have the opportunity to form a paternal relationship and become a moral father.

Clearly, Blunkett’s right to have a paternity test conducted, or his freedom to claim his right as a material father, will depend upon the welfare of the child(ren). A court may have to decide on the extent to which the children will be affected, both emotionally and physically, by the potential upheaval of discovering that the man they call ‘dad’ is not their genetic father. The

importance of knowing and recognising their biological father is debatable. Despite the fact that many people think this is important (consider the prevalence of adopted and donor conceived children who search for their biological parents), research suggests that it makes little difference to a child's development whether they are raised by their biological parents or not (Brewaeys 2001; Golombok et al. 1999; Golombok 2000). Given that the framework places overriding weight on the welfare of the child, the question of whether or not Blunkett can have a paternity test will be answered in terms of what the impact on the child would be. If, overall, it is negative, then the test should not be permitted. If it is potentially positive, or at least neutral, then there is no reason, on the grounds of the welfare of the child, to bar the test. It might turn out to be the case, as Quinn's husband claimed, that even if Blunkett were the causal, and consequently a material, father it would not be in the children's interests to have contact with him as a moral father. In fact, if this were judged to be the case then it may be the supreme test of Blunkett's paternal feelings – for on this framework he would in no way be considered a moral father unless he puts the children's interests first. Ironically, and somewhat dramatically, in this circumstance the only way for him to *become* a moral father (in a loose sense) may be to withdraw his claim. Further, this kind of action would seem to mitigate him against not fulfilling his paternal or material responsibilities. Even though he believes, or even if he knows, that he has material responsibility, he might decide not to interfere with the Quinn family by insisting that he is allowed to discharge it, and thereby lose his right as a material father. In doing this he would be sacrificing his right to become

a moral father, and in doing that he would, in a real way, demonstrate the defining quality of a moral father – that of putting his children first.

If, on the other hand, it is not judged to be detrimental to the children's welfare to have Blunkett enter their lives as a moral father, then those children would most likely come to have two moral fathers. They would have Mr Quinn who is a material and a moral father but not a causal father, and they would have Blunkett, who would be a causal, material and moral father.

The outcome of a case such as this is undoubtedly contingent upon the factual circumstances, including the reason for Blunkett's absence up until this point and the impact any actions taken will have on the children. These empirical questions supervene upon the normative questions to the extent that should the factual circumstances change then the answers to the normative questions also change.

Real case comparison - Blunkett

The solution offered by the framework bears a resemblance to the way in which the case was actually resolved, although the motivation differs. From the little information that is publicly available⁴⁶, it appears that the court's primary concern was the welfare of the children involved, and that the court considered it in the children's best interests to know, and to have a

⁴⁶ The series of hearings that comprised this case were held behind closed doors in the Family Court Division, and as such it is difficult to establish the facts about how it was handled. However, because the case involved such a high profile public figure some information was made available to and through the media, and as such my only sources of information have been the newspapers and online encyclopaedias – and the details are frustratingly sketchy.

relationship with, their biological father. The BBC reported Mr Justice Ryder's judgement, in the initial hearing in December 2004, that "it was in the child's best interest to have his parentage determined at the earliest opportunity by the court" (BBC news 2004), and court sanctioned paternity tests were thus conducted on the two year old, and on the second child shortly after its birth. Quinn's appeal to have the December 2004 hearing adjourned for four months, on the grounds that she was pregnant and too stressed to continue were rejected by the court as unreasonable, which stated that delaying the proceedings could damage Blunkett's relationship with the older child (BBC news 2004). In December 2004 DNA tests confirmed that the older child was Blunkett's biological son and he filed for access – the outcome of which is unknown (Wikipedia 2007a;Wikipedia 2007b). This is in line with the framework as the positive DNA test established Blunkett as the causal father and thus that he had a *prima facie* material responsibility which he should, all things being equal, be permitted to discharge. In March 2005, it was confirmed by DNA test that the new-born child was not Blunkett's progeny, and his paternity claim was halted (BBC news 2005). This is again in line with the framework because it demonstrated Blunkett was not the causal father.

The concern for the welfare of the children is where the framework and the actual case most converge, and the court's assumption that those interests are best served by establishing his genetic paternity is an empirical claim that I would argue needs to be backed up, but which the framework cannot comment upon. The other similarity is that the court rejected Quinn's appeal for adjournment on the basis that she was acting unreasonably. Where the

framework diverges from the way the case was handled is that the court did not consider it important to establish whether or not Blunkett had a moral obligation to fulfil (by virtue of being a causal father). The framework considers it a requirement of justice to establish this, and then this must be balanced against the interests of the child involved – and this is something that the courts did not appear to recognise.

*Paternity 'fraud'*⁴⁷

Ben is the father of three children, but discovered when he separated from his wife that two of his sons, now in their thirties, were not his genetic offspring. Ben still considered himself to be the boy's father, but he also wanted to sue their 'real' father for damages, claiming that in raising another man's children he, and his own child, lost out on many of life's pleasures that they would otherwise have been able to afford. He says that as a devoted father raising children has been hard work, and he believes that the other man should have owned up and offered to pay his share. Why should he get away with not giving him anything for bringing up his kids?

The questions that need answering here are: who is the 'real' father; which man has responsibilities to the children; and does Ben have morally legitimate grounds to claim compensation from the 'real' father?

⁴⁷ Although fictional, this case is a conglomeration of the kinds of cases that are seen in press and on the internet, and the claims 'Ben' makes are typical of the claims that men in this position do make. For legal reasons, I have been advised not to refer in this section to any real cases, which is why I have made no references here.

Draper has argued that in cases like this there is a distinction to be made between the entitlement to compensation vs. reimbursement (Draper 2007b). A man in Ben's position, she argues, would not be entitled to compensation because (a) Ben is the boy's father and, (b) on balance he was not *harmed* by being a father, but actually enjoyed it and wishes to continue being a father to the children involved. There is, she argues, simply no harm to be compensated for, assuming that it is not appropriate to be compensated for his wife's infidelity. He may, however, be entitled to the reimbursement of monies he paid, given that his payment was contingent upon the mother's 'deception'; but that reimbursement should only cover the minimal cost of raising a child and not the extra costs he might have incurred by striving to be a good father (such as day trips or expensive presents) because those costs were the result of his own choices.

Clearly, according to my framework, Ben is the boy's moral father, and in that sense I am in agreement with Draper that Ben is the (or at least 'a') real father. He has accepted and discharged paternal responsibility, earned paternal rights, and formed a paternal relationship with them. Given this, Ben arguably cannot claim compensation for raising children that are not his - because they *are* his children. He is their father in a morally meaningful sense, and the moral fatherhood that Ben gained as a result of the deception - and the moral fatherhood that he continues to enjoy - is undoubtedly a source of great joy to him. According to Draper the compensation claim of a man like Ben is undermined by the fact that it is based a conception of fatherhood as genetic relatedness, whereas his actual view of fatherhood is

more pluralistic, giving more weight to social relationships than genetics (Draper 2007b). I have a great deal of sympathy for this position, and it does seem that Ben's compensation claim is undermined by the fact that he enjoyed, and continues to enjoy, the moral fatherhood that he took on. This fact, I believe, may well undermine the success of his claim, or it might mean that the fiscal payout of a successful claim might be negligible, but this is, and must be, distinct from whether or not he is entitled to make a claim in the first place.

The framework suggests that he is entitled to make a claim for compensation, but not because he 'falsely' believed he was a father all these years – he *has* been a father. Rather, he has a claim because he was deceived into choosing to become a material and a moral father, and his choice was not, therefore, an autonomous one. In a sense, he was 'conned' into taking on an inescapable paternal responsibility, and this took his life in a very different direction to that which it would otherwise have gone. According to Draper's argument Ben's lack of choice is less important here than I suppose. She argues that few people ever choose to become parents in advance, and do not have a choice about which direction their life takes when they do (Draper 2007b). Most men, particularly, have no say in whether or not they become parents. If a man has sex, and an unintentional conception occurs, he does not have a choice about whether or not to become a parent – he simply becomes one – and given this it seems odd to compensate Ben for not having a choice that most men do not ordinarily have. To some extent, I agree, but I think that the major point here is that there is a mitigating factor that justifies

this lack of choice in the case of most men, but not in Ben's case. According to the framework most men in this position are causal fathers, which means they are causally implicated in the creation of a child that makes them morally responsible. Causal fathers have a material responsibility which is morally inescapable, and so their lack of choice is unproblematic.

Ben, however, is not a causal father and so he has no *prima facie* responsibility. At the point of choosing, Ben was in a position similar to that of a potential adoptive father. He had no responsibility take the children on – and so he was in a position to choose whether or not to do so. There would be, I feel, little argument against the claim that it would be wrong to not give a man a choice whether or not to adopt a child for whom he bears no prior responsibility – and yet this is exactly the position that Ben was in. Given that he was not allowed to make a choice that he was entitled to make, and given that as a result his life ran differently to the way it otherwise would have done, then it seems he is entitled to some kind of compensation for the harm of not having that choice. This compensation may be a negligible token amount for the point of principle, or if he could prove that his life would have gone very differently and that he lost out on a great deal, which, on balance may have made his life better, it may be large. These kinds of details would have been worked out on a case by case basis, but my main point here is that in principle, it seems that Ben is entitled to make a claim for compensation. Given this, it is also appropriate that Ben has a claim to be reimbursed the monies that he committed as a result of the deception – although I take on board Draper's point that this reimbursement should be limited to the minimal

costs of raising a child and not include the optional extras that Ben chose to commit.

To whom this compensation and reimbursement claim should be directed is another question entirely. The basis of Ben's claim against the causal (genetic) father is that he had responsibilities that he did not discharge, which Ben was deceived into discharging for him. This framework would agree with his analysis. As the causal father, the genetic father had a material responsibility, and because he was absent and had not taken on paternal responsibility, this was owed as a duty of compensation to the mother. This duty of compensation was not discharged, and could have legitimately been enforced. However, rather than doing this through legal channels, the mother chose to get material support from Ben who, believing he was the genetic and the causal father, willingly gave it. If the children's mother was aware of their true paternity from the start then, assuming Ben only accepted paternal responsibility because he believed the children were genetically his own, her actions almost certainly amounted to the fraudulent extraction of monies that were not owed. Given this, Ben does not have a legitimate claim against the causal father, but he does have a claim, for both compensation and reimbursement, against the boys' mother because she is the person who has perpetuated the fraud and sought financial support from Ben despite the fact that he did not owe it.⁴⁸ However, although Ben's claim must be directed

⁴⁸ Although if both the mother and the causal father were a party to the fraud, then the claim would be appropriately directed towards them both. Alternatively, if the causal father was not a party to the fraud, but himself a victim having been deceived into believing that he was not the causal father, then he might be in a position to claim compensation for the harm of being denied the opportunity to fulfil his material responsibility. Again, it is not clear that such a claim would, or could, be successful, but there is a clear sense in which the causal father might have been harmed by losing the opportunity to become a moral father.

towards the boys' mother, she in turn would have a legitimate claim against the causal father for his fair share of that money – given that he has a *prima facie* material responsibility, to be discharged in his absence as a moral father as a duty of compensation to the children's mother; and this amount would be equal to the amount reimbursed to Ben. The causal father, who was not a party to the fraud, could not be expected to contribute towards any compensation payout. In essence, Ben would be claiming reimbursement from the boys' mother, who would in turn be able to recoup those costs from the causal father; although any compensation costs would be borne by her alone if she was the only party to the fraud.

In this case, when we ask 'who is the real father', the answer is that both men are fathers. The genetic father is the boys' causal father, and Ben is their moral and material father. The case is complicated because of the deception and fraud involved, but this factor can be separated from the issue of paternity. As Kaebnick correctly suggests, in cases like these "we are likely to be distracted by the thought that the child is the result of a sexual betrayal...But sexual betrayal is not, after all, itself a feature of the relationship between a man and the child. It is a feature of his relationship with his wife" (Kaebnick 2004) p51.

Absent and unwilling fathers

Thomas found out that Ellen, his girlfriend of six months, was 8 weeks pregnant. He tried to convince her to have a termination because he did not want to be a father. When she refused he left her, moved away, and said that

if she wanted to have a baby she could do it by herself. Later on Thomas agreed to pay child support and began to make payments once the child, Julie, was born, but refused to have anything to do with her. A few months after Julie was born Ellen met Will, and they fell in love. Will moved in with Ellen and they began to raise Julie together. Thomas then claimed that, since Will had a good income, his money was not needed anymore, and he stopped paying child support. When Julie was two years old, Thomas decided that he was ready to get involved, but Ellen refused him contact. Thomas claimed that he is Julie's father and he has a right to have access to Julie.

The questions here are: who is Julie's father; and does Thomas have any paternal rights?

On this framework Thomas is clearly a causal father. By virtue of that fact he has a material responsibility and the opportunity to become a moral father through discharging that responsibility and accepting paternal responsibility. Initially, he chose to discharge his material responsibility, but refused to accept paternal responsibility. This made him a material father, and in light of this he had a *prima facie* right to form a paternal relationship with Julie. However, he did not do so. Thus, he became a material father but not a moral father, and as such he did not have paternal rights.

When Will moved in with Ellen and began to raise Julie with her, he voluntarily accepted paternal responsibility, and when Thomas stopped paying child support Will also accepted material responsibility. In doing so he created a

relationship of expectation and dependency that generated paternal responsibility, earning him paternal rights. In doing this, Will became a moral father to Julie. Thus, Julie has two fathers, a causal and (temporarily) a material father (Thomas), and a moral and material father (Will).

When Thomas stopped discharging his material responsibility to Ellen he ceased to be a material father, and therefore lost the *prima facie* right to form a paternal relationship with Julie. Having already rejected this responsibility he cannot claim that it would be an injustice not to allow him to discharge it in the future. He was given the opportunity to discharge it, and he refused. Therefore, when he came back after two years and wanted to become a moral father, he had, on this framework, no right to do so. At that point, he is causal father only. Ellen and Will could choose to allow him access to, and a relationship with, Julie, but he has no right to demand it. The only point at which he could otherwise be allowed a relationship with Julie would be the point at which it serves her interests or the point at which she desires it and is old enough to make that decision herself.

Control over frozen embryos⁴⁹

Natalie and Howard had been in a long-standing relationship for a number of years and were engaged to be married when Natalie was diagnosed with ovarian cancer after having difficulty in conceiving. The cancer was treatable, but she was told that treatment would leave her infertile. Natalie decided to

⁴⁹ Based on *Evans v The United Kingdom* [2007] ECHR 6339/05.

go ahead with the treatment, but knowing that she and Howard wanted children they underwent IVF treatment and created embryos, using their own gametes, that were then frozen and stored for future use. Natalie's treatment was successful, but during the course of her treatment she and Howard ended their relationship. Natalie later wanted to use the embryos to become pregnant, but Howard objected. He said that he did not want to become a father and did not want to have his child raised in his absence. She said that it was her only chance to have a child, that he would not have to be a father to the child, and that she wanted nothing from him in terms of financial support.

The questions here are; would Howard be a father to the child; would he have responsibilities towards the child; and does he have a right to veto Natalie's use of the embryos?

This case is complicated from the start because it is not clear that a person to whom Howard could be a father yet exists, and the question of whether or not it is possible to be a parent of an embryo will necessarily supervene on the outcome of this case. Draper has argued that it does make sense to think of an embryo as having parents, and that "whether or not one has parents does not seem to be related to whether or not one is a person" (Draper 2007a). Even if we accept that an embryo does not have personhood *per se*, it can still make sense to talk about the 'parents' of an embryo. I do not intend to take a position on this issue here and, rather, I will apply the framework to the case twice: first assuming that an embryo has parents, and then assuming that it does not.

If embryos can have parents Howard is already a causal father (and Natalie is already a casual mother). Assuming that both Howard and Natalie have contributed to the freezer storage costs, then he is also a material father (and Natalie is a material mother). Given that Howard is a material father he has the right to accept paternal responsibility. The fact that he does not do so means that he has no claim to paternal rights. Given this, he has no say in how the embryo is brought up or where it resides. Therefore, he has no right to interfere with Natalie exercising her maternal rights (which arose from accepting maternal responsibility and becoming a moral mother of the embryo). Accordingly, he has no right to prevent Natalie from using the embryos, because all she is doing is exercising her maternal rights to determine the residency of the embryo, which for the next nine months would be her womb. In fact, the only way for Howard to acquire the right to have a say in determining the residency of the embryo would be to accept paternal responsibility and earn paternal rights. However, in order to do this he would have to commit to providing emotional, developmental and practical support to the embryo – a commitment incompatible with his wish to have the embryos destroyed.

If we assume that the embryo is not a thing that can have parents, but a collection of cells that will have parents if it is allowed to develop, the case becomes more complicated. In this case, Howard is objecting to Natalie making him a father. First of all, on this framework, even if Natalie uses the embryos Howard would not be a casual father. He may have provided his

gametes for use, but it would be Natalie who actually uses them, and thus she is the prime mover and without his consent she has sole causal responsibility. Howard becomes a peripheral player, akin to a sperm donor in the level of the causal responsibility he has. It is, perhaps, plausible to think of Natalie as a potential 'sperm-jacker' (like the Goddess Penia) who intends to use Howard's sperm without his permission – which makes his lack of causal responsibility even clearer.

Under such circumstances Howard would not become a causal father, a material father, or a moral father. He would thus have no rights or responsibilities. However, Howard knows that he will have no responsibilities for the child. His objection is based on the claim that he will still *feel* responsible for the child because he is the genetic father. He says

I can absolutely understand people saying I've been heartless. I realise I'm denying Natalie the right to have a child with me. But I want to be able to choose when and with whom I become a parent. When I have a child I want to be a responsible father not just a sperm donor who plays no part in his or her life. (Hall 2007)

p19

He does not want to be forced into feeling responsible for a child, and he does not want a child for whom he feels responsible being raised without him.

The empirical data collected for this project suggest that Howard is not alone in feeling responsible for his genetic progeny. Even if that feeling has no clear moral justification, it is still there. There is, he might say, a natural connection that he could not help but feel. Knowing that he would feel this way, Howard does not want Natalie to force him into that position. The point is that if a child was created, he would want to be its father, but he does not want to be a father yet and it would be wrong of Natalie to force him into it. However, on this framework, Natalie would not be forcing Howard into being a father in any sense other than in an obvious and unimportant biological sense – and this would be the case regardless of how he may feel about it.

According to this framework, Howard could not object to Natalie using the embryos on the grounds that it would make him a father against his will, because it wouldn't. Given this, Howard's claim must be based on the fact that he would still *feel* like a father without being able to *be* a father, and this harm must then be balanced against Natalie's claim that she would be harmed by being denied motherhood. She says "I'm distraught. It's hard for me to accept that I will never become a mother. I was fighting for my right to become a mother..." (Hall 2007) p19. Of course, it is also necessary to make the point that if this account of fatherhood can work as an account of motherhood, or parenthood in general (which I believe it does), then Natalie's claim to use the embryos cannot be based on it being her only chance to become a mother, because she could become a morally meaningful mother by adoption or egg donation. Rather, her claim is based on her feeling the need to become a moral mother who is also a *progenitor* mother. What is

interesting here is that the dilemma then becomes a matter of deciding whose valuing of the genetic connection is more important. The framework says that Howard has no rights or paternal status in virtue of his genetic connection, but it also implies that Natalie has no real grounds for insisting she has a genetically related child, because morally meaningful motherhood is not based on genetics (just as morally meaningful fatherhood is not). The framework, then, rejects both of their 'parent based' claims. Neither have a better claim from parenthood than the other, and thus the issue should perhaps be looked at in terms of who will be harmed more, in terms of what promises had been made at the start, or in terms of consent and legal contract.

In conclusion, if we assume the embryo can have parents the framework supports Natalie's claim. However, if we assume that the embryo is just a collection of cells with no parents the framework does not help us to solve the dilemma directly. It does, however, help to clarify who has a claim from parenthood - and it suggests that neither Howard nor Natalie do - which directs us to look at the problem in a different way.

Real case comparison – Natalie and Howard

When this case was heard, for the final time, at the European Court of Human Rights, the court's primary concern was to establish if there had been a breach of Articles 2 (the right to life), 8 (the right to respect for family life and privacy) or 14 (to right to be free from discrimination) of the *European*

Convention on Human Rights 1950. The court found that there was no violation of any of these articles, and rejected Natalie's appeal.

The court did not seem to be concerned with whether or not an embryo could have parents, and appeared to assume that only if the embryos were implanted would Howard and Natalie become parents. In doing so the court seemed to be working with a conception of fatherhood that has been rejected by the framework. Arden LJ stated that:

[t]he interference with [Natalie's] private life is...justified under Article 8 § 2 because, if [Natalie's] argument succeeded, it would amount to interference with the genetic father's right to decide not to become a parent... Motherhood could surely not be forced on [Natalie] and likewise fatherhood cannot be forced on [Howard], especially as in the present case it will probably involve financial responsibility in law for the child as well. (Evans v The United Kingdom [2007] ECHR 6339/05, per Arden LJ, 20)

This clearly belies an assumption that should the embryos be implanted and carried to term Howard would become a father in the sense that he would have responsibilities and rights. The framework challenges that view, and argues instead that Howard would not have become a father in any meaningful sense such that he has rights or responsibilities – he would merely have become a progenitor.

However, it seems the court was much more concerned with questions of consent and fairness than with definitions of parenthood. Although there did seem to be an assumption that Howard would become a father if the embryos were used, the judgement focussed on the fact that both parties were entitled by law to withdraw their consent, and that allowing Howard to do so did not breach Natalie's human rights. Justice Wall commented:

If a man has testicular cancer and his sperm, preserved prior to radical surgery which renders him permanently infertile, is used to create embryos with his partner; and if the couple have separated before the embryos are transferred into the woman, nobody would suggest that she could not withdraw her consent to treatment and refuse to have the embryos transferred into her. The statutory provisions, like Convention rights, apply to men and women equally. (Evans v The United Kingdom [2007] ECHR 6339/05 per Wall J, 17)

It was also stated, by Arden LJ that it was appropriate to assess the case on this basis because to make a judgement about the relative harms to either side would be impossible:

...it would be difficult for a court to judge whether the effect of [Howard's] withdrawal of his consent on [Natalie] is greater than the effect that the invalidation of that withdrawal of consent would have on [Howard]. The court has no point of reference by

which to make that sort of evaluation. The fact is that each person has a right to be protected against interference with their private life... (Evans v The United Kingdom [2007] ECHR 6339/05, per Arden LJ, 20)

Given this 'stalemate', the final judgement seems to have been based upon the fact that the HFE Act 1990, which was explained to all parties, clearly stipulated the point at which consent may be withdrawn, and in drawing this line Parliament had not violated the requirements of Article 8, was not discriminatory against Natalie (Article 14), and, because there was no clear consensus on when life began, had not violated the embryo's right to life (Article 2). Thus, in spite of the fact that the court seemed to be working with conceptions of parenthood that the framework would not endorse, the judgement itself was not made on the basis of claims from parenthood, and this is exactly what the framework would recommend.

*Fertility clinic mix-up*⁵⁰

Two couples, Mr and Mrs A (who are both white), and Mr and Mrs B (who are both black) independently sought fertility treatment at the same clinic, at the same time. Both men produced a sperm sample, which was intended to be used to inseminate their respective wives. The samples became mixed up in the lab, and Mr B's sperm was used to inseminate Mrs A. When Mrs A became pregnant, and later gave birth to mixed race twins, the mistake became obvious, and Mr B was discovered to be the twin's biological father.

⁵⁰ Based on The Leeds Teaching Hospitals NHS Trust vs. Mr A and others [2003] EWHC 259 (QB)

Both Mr A and Mr B claimed paternity of the twins. By the time the case was heard in court the twins were two years old, and had been living with Mr and Mrs A for that period.

The questions that need answering are: which of these men is the father; what kind of father is he; and what rights and or responsibilities does he have?

It is clear from the fact that Mr A has been raising the twins, and formed a paternal relationship with them, that he is their moral father. He voluntarily took on paternal (and material) responsibility for them, and in discharging that responsibility he earned paternal rights. The difficult question is whether or not Mr B is a father at all, and on this framework it seems he is not. Of the three kinds of father I have distinguished, he could only be a causal father. Although he certainly produced the genetic material, but he did not consent to its being used to inseminate Mrs A. Mr B's causal role, then, was like that of an unintentional and unwilling sperm provider to Mrs A, and in that sense he does not have causal responsibility for the twins, and thus he is not a causal father. Accordingly, he has no material responsibility to discharge, and thus has no right to do so. Mr B is clearly a genetic father, but according to the framework a genetic father is not necessarily a causal father. Being a genetic father does not lead to rights or to responsibility. Responsibility is generated causally by the 'prime mover', and rights are earned through discharging responsibility.

It has been found that genetic fatherhood is sometimes valued because it is believed that it facilitates a father/child relationship. It is believed to act as a non-usurpable lifeline between father and child, but it does not make a man a father in any morally meaningful sense. To speak of the genetic connection being significant as a facilitator of, or as a lifeline to, a paternal relationship, presupposes that the man in question has a claim to fatherhood in the first place. All of the men who talked about the genetic connection in this way were causal fathers, willing and able to discharge material responsibility, and who needed to insist on a physical link between them and their children. However in Mr B's case, on this framework, there is no fatherhood to facilitate.

Mr B is not able to appeal to any mitigation here, because on this framework mitigation only applies to men who have material responsibility for a child but are unable to discharge it through no fault of their own. In this case, Mr B has no material responsibility because he is not a causal father – and because of this he has no *prima facie* right to discharge material responsibility, and consequently has no route into moral fatherhood.

This outcome may nonetheless be regarded as ignoring the very real sense in which genetic fathers may feel they are naturally bonded to their offspring – as discussed above in relation to Howard. However, whilst a biological connection may incline a man towards his progeny, this inclination does not equate to a right, and neither does it equate to fatherhood in the sense that is being used here. It is true that this answer will not be satisfactory for those who have this feeling, but it is also true that perhaps more basic values

concerning how rights and responsibilities work, and what morally meaningful fatherhood really is, are inconsistent with the idea that a mere progenitor has rights and/or responsibilities in virtue of his genetic relationship with a child. On balance, this framework is representative of the fact that my research population valued the genetic relationship less than they valued causal responsibility, having to earn rights, and a social conception of morally meaningful fatherhood. On this occasion, this leads to Mr B having no claim to the twins, nor having any responsibilities towards the children, nor meaningful paternal status.

Given that Mr B wanted to have children, and that his not having children may well be the result of a mistake made by the clinic (although even if the right sperm was used there was no guarantee it would have resulted in a child), it might be tempting to think that he has been cheated out of fatherhood. We might think that in light of this he deserves to be considered a father – because he deserves something by way of compensation. This may well be true, but it would be an inappropriate sort of compensation to give him fatherhood – and the temptation to do so might well stem from the feeling that there is simply no other adequate compensation to give him. Arguably, given that the clinic is at fault the burden of compensation would be on them (and not on Mr and Mrs A), and the clinic should offer to provide Mr and Mrs B with free treatment. Perhaps, however, this is the kind of case where it has to be accepted that Mr B cannot be adequately compensated. This is, however, no reason to consider him a father, but only as somebody who tried to be a father, and failed – albeit through no fault of his own.

Under this framework, Mr A has a clear claim to fatherhood. He has been raising the twins from birth and he has developed and fostered a paternal relationship with them. He has committed to them as their father, and provided developmental, physical and emotional support. He is, then, the twins' moral (and material) father, and by virtue of this he has both responsibilities to them and rights with respect to them. Whether or not he is the twin's causal father is less clear. On the one hand he did consent to the IVF treatment, but on the other he did not consent to the use of Mr B's sperm. However, it is the case that Mrs A would not have been inseminated at all if it were not for Mr A's consent, and even though the wrong sperm was used, no sperm would have been used 'but for' Mr A's consent (and this is so regardless of Mr B's activities). Accordingly, it might make sense to consider Mr A the causal father. This point, however, is rather academic, as a man does not have to be a causal father in order to become a moral father. The fact that Mr A accepted the twins – who were his wife's children - as *his* children, identified himself as their father, and committed to them as a father, is enough. Accordingly, Mr A's claim to be a moral father is sound, and as such he has both paternal rights and paternal responsibilities.

One complicating, and possibly determining, factor in this case is the race of the children. Arguably, given that the twins were black it would be contrary to their interests to be raised by white parents, suggesting that Mr (and Mrs) A should not be awarded paternal responsibility and rights. I have argued already (in Chapter 7) that it does not make sense to award parental status on the basis of who can provide the best possible home for a child, as this would

mean many good and adequate parents should lose their children. Thus, it potentially would only be appropriate to remove the twins from the care of Mr and Mrs A if it could be proven to be contrary to the twin's interests to remain with them. That it may not be in the twins' very best interests to stay with Mr and Mrs A, because they are not black, is not sufficient reason to remove the twins from their care. The only justification for removing them would be if they were being positively harmed by remaining in the care of Mr and Mrs A, which is a very different point to saying that they would be better off, ideally, being raised by black parents. Furthermore, if it were the case that the twins would be harmed being raised by white parents, this would only mean that they should be raised by *some* black parents, and not necessarily Mr and Mrs B. Other than the fact that Mr and Mrs B have shown an interest in them there is no reason to give the twins to them than to any other equally capable black couple – given that Mr B has no prior and independent claim to fatherhood.

Real case comparison – Leeds NHS Trust, Mr A and others

When deciding this case, the court's primary concern was the welfare of the children, and it was clearly thought to be in the twin's interests to have Mr B named on the birth certificate. Of particular concern was the fact that the twins were of mixed race and had 'inherited two cultures', and this undoubtedly influenced heavily the decision to name Mr B on the birth certificates as the twin's legal father:

Through no fault of theirs, they have been born children of mixed race by a mistake which cannot be rectified...They have inherited

two cultures but, in reality, can only gain real benefit from one during their childhood...Prior to this hearing they had a loving, stable and secure family. Mr A is registered as their father on the birth certificate.... I...am certain that the truth in this case is more important to the rights of the twins and their welfare than a fictional certainty... To refuse to recognise Mr B as their biological father is to distort the truth about which some day the twins will have to learn through knowledge of their paternal identity. The requirement to preserve the truth will not adversely affect their immediate welfare nor their welfare throughout their childhood. It does not impede the cementing of the permanent relationship of each of them with Mr A who will act as their father throughout their childhood. (The Leeds Teaching Hospitals NHS Trust vs. Mr A and others [2003] EWHC 259 (QB), per Butler-Sloss, P, 55/57)

However, it is also clear that Mr A was considered, for all intents and purposes, the twin's father, and the naming of Mr B as the legal father was not judged to affect the status of Mr A as a resident father with parental responsibility.

Whilst this judgement is congruent with the framework insofar as it put the children's interests first, and considered the relationship between Mr A and the twins to be a significant marker of fatherhood, it diverges insofar as in giving Mr B legal paternity he is given legal entitlement to challenge for a parental responsibility order in the future. This would only be granted if it

were considered in the interests of the twins, but the right itself seems to stem from the fact of his genetic connectedness and the welfare of the child – both of which are rejected by the framework as sources of rights for putative fathers.

Summary

In examining these challenging cases I have tried to show how the framework fulfils the 'fit for purpose' criterion, in that it does help to resolve challenging cases, and, I believe, does so better than the existing arrangements. It may not resolve them in way that would be satisfactory for all the stakeholders, and neither does it resolve them in a way that will be consistent with everyone's preferences – but then neither does the current arrangement. It does, however, help to resolve them in a *non-arbitrary* way, using a framework for decision-making that is based on moral intuitions that are empirically endorsed and familiar. In this, the framework is successful. It is informed by general moral principles that were empirically endorsed by my research population, and its main strength is that it is able to accommodate those principles in a coherent and systematic way.

Clearly, the framework does not simply pander to what people might want, and neither does it give an account of how the world should be that is based solely on how people want the world to be or the way it is. It suggests that people *ought* to behave in a particular way, even though it might be contrary to their preferences – and so it is normative, and not descriptive. It does not tell us what we should want, but it does tell us that, given the basic moral

values that seem to be prevalent, certain ways of behaving or acting are more appropriate, and certainly more consistent, than others.

Section six – Conclusions

In concluding this thesis I do not intend to re-cover and re-state the findings of the project. Each individual section has already been summarised and concluded, and to do so here would be unnecessarily repetitive. Rather, I will use this section to reflect upon the project as a whole and comment upon its successes, areas for improvement, and its implications. Because this project set out to cross disciplinary boundaries there are a number of different areas to discuss. For ease of presentation I will separate these into reflections on the methodology and reflections on the philosophy. Within in each of these I will comment on the implications for policy and possible avenues for future research. Before I do this, however, I will briefly review what has been achieved in this thesis.

Some general comments

I set out to conduct an empirical and ethical exploration of the moral significance of genetic relatedness within the father/child relationship. Two aims were identified; to gather lay opinion on how the rights and responsibilities of fatherhood should be generated, and to use this data to inform a normative philosophical framework for the acquisition of paternal responsibilities and rights. Although neither of these aims were simple to achieve the biggest challenge was undoubtedly posed by the second, which required me to find a way to use the empirical data to inform the normative framework. Essentially, the aims of this project have been achieved by successfully gathering empirical data which documented the moral arguments

used by men when discussing the legitimate sources of paternal responsibilities and rights, and in doing so identifying the basic moral intuitions that function as basic un-argued for premises, or framework beliefs. The novel method that I then used was to substitute these empirically gathered intuitions for the intuitions present in the arguments used in the literature, and used these as the foundational premises on which to build a new normative framework from the bottom up. The strength of this new framework is that because it is built on empirically gathered intuition, it is clear that it is not simply a 'personal confession'. Its direction, from the start, has been dictated by the moral values evinced in the intuitions gathered, and thus it works with concepts and values that I can confidently say are not simply my own, but that are common to others. Referring back to Section Two, in which I criticised some writers in the field for appealing to a generic and unqualified 'we', I have tried to avoid that same 'mistake' by making the 'we' that I appeal to specific and qualified.

Further, the process of conducting the empirical research has broadened my horizons as a philosopher, and exposed me to points of view and experiences that were hitherto unknown to me. At the very least, even if I am criticised for the way in which I have used the empirical data as a substitute for my own intuitive beliefs (which I am sure I will be, as the method is undoubtedly controversial) the process has enriched my understanding of the topic in a way that no abstract theorising could have done. Thus, even if the relationship between the data and the theory is problematic, I would still maintain that the process itself is immensely valuable to a philosopher, and I

would encourage anyone working in any area of applied ethics to embark on a similar journey in order to better understand their topic.

The framework itself has been shown to be robust in dealing with challenging cases, and whilst it is clear that it cannot resolve them in such a way as to make everybody happy, it is just as clear that it does not solve them in a morally arbitrary way, but by appealing to 'our' basic moral concepts and providing a resolution that is consistent with them – and this is itself an achievement.

One of the novel elements to arise from this project is a reworking of the way in which child support should be arranged. On this framework, child support is not something that is paid by the absent father to the child through the mother. Rather, it is generated as a material responsibility owed by the causal father as a duty of compensation to the mother, for his fair share of the costs of raising a child. This would represent a major paradigm shift in the way in which we construct the notion of child support and maintenance, and the implications of this for policy would need to be worked out elsewhere. Furthermore, this may be an opportune time to do so, given the reforms taking place within the child support system.

The framework also suggests that it would be beneficial for fatherhood as a concept to be split up into 'causal', 'material' and 'moral', so that the morally meaningful 'father as carer' can be distinguished from the less morally meaningful 'father as progenitor', and to help elucidate the point that paying

child support does not, and should not, make a man a 'father' in a morally meaningful sense. To make this conceptual distinction standard would help clarify the debate insofar as we would be able to talk about sperm donors being fathers (as progenitors) without attaching to them the significance in terms of responsibilities and rights that is attached to causal, material or moral fatherhood. We can think of a man as a father in one sense, but not in another; and having clear terms for these different senses of fatherhood can only lead to greater communicative clarity. Although others have argued for greater semantic clarity in the terms used to describe different kinds of parenthood (Bainham 1999; Eekelaar 2001; Snowden, Mitchell, & Snowden 1983), none have advanced a notion of moral fatherhood which is distinct from genetic or causal responsibility, as I have done here – although others have done so without making these clear terminological distinctions (Dowd 2005; Kaebnick 2004).

If these conceptual and terminological distinctions are adopted, it becomes clear that it is only possible for one man to be a father as progenitor, but that this is only one way of becoming a causal father, of which there could be many (consider two homosexual men who seek out a surrogate together). Furthermore, it is possible for many men to potentially be material or moral fathers. In these terms we can speak of a child as having more than one father. For example, a child might be donor conceived and raised by her mother and father for five years. The family could break up, and the child might then be raised by her mother and her mother's new partner (who takes on paternal responsibility), but still have contact with her first father. It makes

sense to speak of this child as having three fathers, one father as progenitor (the donor, who has no rights or responsibilities because he is not a causal father), one causal father who is also a material and moral father (the mother's ex-husband), and another material and moral father (the mother's new partner) who is not a causal father.

One particular contribution that this research can make is to highlight the different values that are attached to the different kinds of fatherhood. It was not simply a matter of the distinctions being made, but of a clear moral preference and valuing of one kind of fatherhood – moral fatherhood - over the others. This one kind of fatherhood was normatively loaded in a way that the others were not, and this is a significant finding in itself.

Methodological reflections

Data gathering, bias and reflexivity (3)

In terms of data gathering, the focus group methodology used was generally successful. The use of an active mode of facilitation worked particularly well in drawing out the participants' moral reasoning, allowing me to access not just the moral convictions of the men but also the basic moral intuitions on which those convictions are founded. The extent to which I have accurately presented these intuitions will depend upon the accuracy of my interpretive analysis. The use of analytic induction within and across each group allowed me, to some extent, to test my interpretations as I went along – but it is still the case that what has been presented is *my* interpretation of the men's thoughts and feelings. However much I have attempted to exclude bias through reflexive practice, using member validation, and having my analysis independently checked by the project supervisors, the analysis, and thus the data presented, has undoubtedly been coloured by my own perspectives.

However, this has not been a one-way process, as the empirical work has also altered my views on the subject. The most salient example of this is that I began this project by reviewing the philosophical literature, and came to the conclusion that fatherhood was simply a social relation. I found no good argument for supposing that genetics were at all important to fatherhood. Once I began to have 'encounters with experience', and once I began to see for myself the depth of feeling that genetic links can engender and the importance that some men attached to it (even though this importance was instrumental), I could not help but acknowledge that any successful

philosophical account of fatherhood could not ignore this. Thus, I was led to build into the framework a way for genetic fathers to become moral fathers – but in such a way as to account for the intuitions (empirically gathered) that sperm donors are not fathers and that paternal rights should not be given to absent and uninvolved genetic fathers. It is, then, not only the case that I may have affected the data – but also that the data affected me.

My exposure to the data gave me access to perspectives and opinions that were hitherto unknown to me, and I was most affected by the strength of the emotion evident in the discussions. The men felt passionately about these issues, with intensity that I had not anticipated (resulting, in one instance, in a group having to be paused because one man broke down in tears). This experience certainly strengthened my resolve to ensure that the framework I produced was sensitive to these feelings, and to ensure that if I ended up arguing contrary to some of their views I had very good reason for doing so. I stress here the importance for me, as a philosopher, of having these experiences. They put me in touch with the people whom my theorising would affect and, as I have argued elsewhere, “[i]t has sensitised me to the realities of fathering, brought me into contact with a range of perspectives and emotions that I would otherwise not have encountered, and it has enabled me to...produce a philosophical framework that is sensitive to those realities.” (Ives 2008). This sensitivity grew from my changing perspectives on fatherhood as I came into contact with the men in my focus groups, listened to what they had to say, and broadened my moral perspectives on fatherhood as I realised that my own experiences, to date, were very limited.

One particular methodological constraint that I felt was problematic was the fact that the research manager at the clinic, from which I sought to recruit participants, acted as gatekeeper and placed limitations on who I could contact. Although he had valid ethical concerns about my contacting certain men, it is likely that their inclusion would have contributed a valuable and unique perspective on the issues being discussed, and this 'lost opportunity' is regrettable.

Philosophy and Social science

The way that philosophy and social science have been married in this project is quite novel, and I believe it has been successful. Relationships between these two disciplines have traditionally been hostile (Borry, Schotsmans, & Dierickx 2005; Hedgecoe 2004) – and the root of this hostility seems to be the fact that social science is largely descriptive, whilst bioethics is prescriptive. Social science describes the world as it is, whereas bioethics says how the world should be, and so, it might be claimed, the two disciplines have little to offer one another. Despite the birth of the 'empirical turn' in bioethics (Ashcroft 2003; Goldenberg 2005), work in empirical bioethics has largely focussed either on bioethics that uses social science data to support the premises of its arguments, or social science that sees bioethics as a subject of study (Draper & Ives 2007). The approach taken in this PhD is new, and has sought to use social science data, specifically gathered for the purpose, to inform the construction of a normative theory.

In terms of the marrying of normative bioethics and social science, it may also be useful to test the method that has been used here on other topics. I may have been fortunate that the axioms generated in the empirical project lent themselves to the construction of a philosophical framework, and this may not happen in all cases. If this were so, it may tell us either that the method is not always productive, or that on some issues there is simply not enough common moral ground on which to build. This question can only be answered if this same method is applied elsewhere.

Generalisability

The extent to which the resulting framework could be generalisable is limited by the methodological limitations of the empirical project. These limits are relatively clear. To begin with, it would have been beneficial to have included focus groups with adoptive fathers who also have genetically related children. Drawing on the experience of fathering genetic offspring and purely 'social children', the views of these men would have been very useful to the study. Further, the framework is limited insofar as it is dominated by the male perspective. Although all three project supervisors were women, the data was generated by groups of men, and the primary analysis was conducted by a man. Given that men are not the only stakeholders in fatherhood, and that women and children are very much affected by the behaviours and beliefs of men as fathers or putative fathers, it seems important that any philosophical theory of paternal rights and responsibilities should also be informed by the views of women and children.

Whilst this project has certainly resulted in useful and interesting data concerning men's views about fatherhood, and whilst it has produced a philosophical framework that is informed by those views and has thus shown that this kind of methodology works, I have not been able to demonstrate that the framework is generalisable. In light of this, the project could be usefully expanded to incorporate the views of women, younger children and outlying groups, such as men who have been 'sperm-jacked'. It would also be beneficial to incorporate the views of adoptive fathers (and mothers), and to have specific groups of children who have been adopted or conceived through donor sperm.

Philosophical reflections

Theoretical constraints

The overall objective of this project was to produce a normative philosophical framework of paternal rights and responsibility, which would be able to provide decision-making guidance for challenging cases. Further, I aimed to do this in a way that was sensitive to the context of fathering and fatherhood in the UK, and to produce not an abstract philosophical theory, but a practical framework that was rooted in the views and experiences of real people. In order to do this, I set out five theoretical constraints, by which I could assess the success of existing theories, and by the same token to guide and assess the framework produced from this project. The first of these constraints was that the framework should be logically consistent, and the framework that has arisen out of this project contains, as far as I can tell, no internal contradictions or logical fallacies. The second constraint was that the framework should be fit for purpose insofar as it has a normative function and is decision guiding. As the discussion of challenging cases has shown in Section Five, the framework fulfils this criterion. Thirdly, the framework had to have intuitive force, which means that whilst the framework could challenge existing practice and belief, it should not require us to endorse practices which we would consider immoral. As such, the framework must be the product of a process of reflective equilibrium, in which weight is given both to philosophical coherence and to existing moral beliefs and practices. This framework has been produced from such a reflective process. I have moved between the empirical data, the philosophical literature and my own theoretical constraints,

and the framework has been informed from the start by the basic moral intuitions that were identified in the empirical project. As such, the third criterion is fulfilled. The fourth criterion dictates that the framework should be empirically plausible, and insofar as the framework offered here makes no empirical claims that have not been backed up by evidence this has been satisfied. The fifth criterion, that the framework must be conceptually encompassing and provide an account of PRE insofar as it can account for both PRI and PO, has also been fulfilled. The framework offered gives an account both of how PO is generated and how PRIs are earned. Thus far, then, the framework can be said to have fulfilled its primary objectives. This is not to say that it is immune from challenge, but only that it has met the requirements that it set out to meet.

The transferability weakness

There are, of course, aspects of the framework that I am not yet satisfied with, and which open it up to criticism. One such aspect is the concept of morally justifiable transference of paternal responsibility. This issue was touched upon in Section Two, but its resolution has not formed a part of this thesis. I preferred instead to concentrate upon the primary acquisition of PRE, and I maintain that the issue of transferability is separate to this. However, much of this debate rests on the question of whether or not PRE can ever be legitimately transferred to another. This project has focussed largely upon the question of how it is generated in the first place, and of this, I think, it has given a good account. The next step is to explore what happens after it is

generated, and whether it is morally legitimate to hand over one's PRE to another in a way that completely absolves one of any future responsibility. Does the final material responsibility always lie at the feet of the causal father, or does it always lie at the feet of the first moral father? Further conceptual work is needed to answer those questions, but for now I am satisfied to have been able to produce a framework to account for how PRE is generated to begin with.

The counter intuitive problem

Despite the fact that I have tried to construct this framework in such a way as to avoid *reductio* objections based on 'counter-intuitive' conclusions, it is clear that not every solution I have offered to the challenging cases will sit neatly with everyone's intuitions. Although the framework is built on empirically gathered intuition, the product of the combination of those intuitions might seem counter-intuitive to some. For example, there may be people who feel that, in the case of the fertility clinic mix-up Mr B should be considered the father, or that in the case of the frozen embryos Howard should have the right to veto their use. My response to this kind of challenge will be to bite the bullet, and to say that given the empirical data that was used to inform the framework, none of these resolutions are entirely counter-intuitive. Any person who endorses the values and conceptual constructions identified as axiomatic, on which the framework was built, should, if he/she is a consistent thinker, also endorse the solutions the framework offers. It also goes without saying that any person who does object to the axioms used will have grounds to reject the framework and its solutions. However, the onus would be on that

person to show that a different set of values and intuitions are more prevalent, and this can, and should, only be done empirically. One of the strengths of this framework is that if the empirical data changes then the framework will, in fact *must*, change accordingly, and if new empirical data comes to light that challenge the axioms that I have used, then that can only be a good thing as it will enable the framework to be adjusted to better do the job it is intended for. One particular problem that needs further consideration is what happens when sperm is stolen (or sperm-jacked), and a man wants access to the resulting child. We might consider that Mr B was in fact in this position (as was the God Poros⁵¹, p280), and where theft is involved it might be felt intuitively that the man from whom genetic material has been stolen might have some claim to the right to become a father. However, according to this framework, such a man would not be a causal father and thus would have no such claim. I am inclined to bite the bullet here – but I think that that further work empirical and conceptual work is needed to unpick this issue.

The strength of gender parity

One philosophical strength of this framework is that it offers parity between fatherhood and motherhood, and makes the acquisition of parental rights and responsibilities gender neutral. Parental responsibilities and rights are, on this framework, dependent upon causality and then choice – things which are equally accessible to both genders. Furthermore, it brings gender equality to the choice of whether or not to become a parent – although not in the same

⁵¹ See p266 above.

way other accounts have done. I have already noted how Sheldon and Brake have tried to create gender equality by giving men the same chance to opt out of parenthood as women currently have. In contrast, this framework creates gender equality from the other side, by giving men the same opportunity to opt into parenthood. On this framework, a willing causal father cannot be excluded from his child's life so long as he discharges his responsibilities. Brake and Sheldon want to give men the opportunity to evade a responsibility that, on this framework, is rightfully theirs. I would prefer, instead, to say that they cannot evade this responsibility (for they are responsible), but that in fulfilling their responsibility they earn the right to become a father. It may simply be a matter of preference that I would rather have a framework of paternal rights and responsibilities that sees willing and committed causal fathers rewarded rather than seeing unwilling and absent causal fathers let off the hook – but I certainly feel that it is the option which is the most just.

One parity issue that has not been addressed here is the fact that, currently, a woman can put a child up for adoption and be absolved of all responsibility for the child, and she can do this without the consent of the 'father' simply by claiming she does not know who the father is. However, a man cannot do the same, and can only be absolved of responsibility if the mother also does so. This is a debate to which the framework presented may have something to add, and would be an interesting topic for further work.

Final remarks

It is clear that this thesis has raised as many questions as it has sought to answer, but I consider the fact that I have been able to meet the aims of this project whilst generating new research questions to be an indication that it has been successful. My aim was to explore, not to find definitive answers, and this exploration has led to the production of a normative framework that is able to deal with challenging and difficult cases well.

Not only have I had the opportunity to examine philosophically and empirically normative constructions of fatherhood, but I have also been able to explore new ways of incorporating empirical data into 'bioethical' reasoning, and find a novel way of engaging in empirical bioethics, and this is an exciting aspect of this thesis that I hope to develop in the future.

The work started in this thesis is far from complete, and there is further conceptual and empirical work to be done; but I am confident both that this doctoral work is valuable in its own right, and that it can form the basis of a coherent future research agenda – and it is an agenda which I am keen to pursue.

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Appendix 1 – Not available in the web copy of this thesis

Appendix 2 – Demographic information

All groups

Age

Age	n=
<20	13
20-30	3
31-40	18
41-50	12
>50	6
	52

Education

Highest qualification	n=
SATs	2
GCSE or equivalent	9
A-level or equivalent	15
Degree	16
Higher degree	9
Unknown	1
	52

Profession

Current or most recent employment	n=
IT	2
Medical profession	2
Management/Finance	7
Academic/Teaching	3
Public sector	5
Professional other	11
Manufacturing industry	2
Retail industry	2
Self-employed	2
Unemployed	1
Student/Full-time education	15
	52

Ethnicity

Ethnic group	n=
White English	29
White Irish	4
White Welsh	1
White Scottish	5
White other	6
Black African	1
Black Caribbean	2
Indian	1
Asian other	3
	52

FGA1

Age

Age	n=
<20	
20-30	1
31-40	3
41-50	1
>50	
	5

Education

Highest qualification	n=
SATs	
GCSE or equivalent	1
A-level or equivalent	1
Degree	3
Higher degree	
Unknown	
	5

Profession

Current or most recent employment	n=
IT	1
Medical profession	
Management/Finance	1
Academic/Teaching	
Public sector	1
Professional other	1
Manufacturing industry	
Retail industry	1
Self-employed	
Unemployed	
Student/Full-time education	
	5

Ethnicity

Ethnic group	n=
White English	4
White Irish	
White Welsh	
White Scottish	
White other	
Black African	
Black Caribbean	1
Indian	
Asian other	
	5

FGA2

Age

Age	n=
<20	
20-30	
31-40	3
41-50	
>50	1
	4

Education

Highest qualification	n=
SATs	
GCSE or equivalent	
A-level or equivalent	
Degree	3
Higher degree	1
Unknown	
	4

Profession

Current or most recent employment	n=
IT	1
Medical profession	
Management/Finance	1
Academic/Teaching	1
Public sector	
Professional other	
Manufacturing industry	
Retail industry	
Self employed	1
Unemployed	
Student/Full-time education	
	4

Ethnicity

Ethnic group	n=
White English	3
White Irish	1
White Welsh	
White Scottish	
White other	
Black African	
Black Caribbean	
Indian	
Asian other	
	4

FGS1

Age

Age	n=
<20	
20-30	
31-40	
41-50	2
>50	2
	4

Education

Highest qualification	n=
SATs	
GCSE or equivalent	1
A-level or equivalent	
Degree	1
Higher degree	2
Unknown	
	4

Profession

Current or most recent employment	n=
IT	
Medical profession	
Management/Finance	
Academic/Teaching	
Public sector	
Professional other	1
Manufacturing industry	1
Retail industry	1
Self-employed	
Unemployed	
Student/Full-time education	1
	4

Ethnicity

Ethnic group	n=
White English	3
White Irish	
White Welsh	
White Scottish	
White other	
Black African	
Black Caribbean	1
Indian	
Asian other	
	4

FGS2

Age

Age	n=
<20	
20-30	
31-40	3
41-50	1
>50	1

Education

Highest qualification	n=
SATs	
GCSE or equivalent	2
A-level or equivalent	2
Degree	
Higher degree	1
Unknown	

Profession

Current or most recent employment	n=
IT	
Medical profession	
Management/Finance	1
Academic/Teaching	
Public sector	1
Professional other	2
Manufacturing industry	
Retail industry	
Self-employed	1
Unemployed	
Student/Full-time education	

Ethnicity

Ethnic group	n=
White English	4
White Irish	
White Welsh	
White Scottish	
White other	
Black African	1
Black Caribbean	
Indian	
Asian other	
	5

FGD1

Age

Age	n=
<20	
20-30	
31-40	2
41-50	1
>50	1
	4

Education

Highest qualification	n=
SATs	
GCSE or equivalent	
A-level or equivalent	1
Degree	1
Higher degree	2
Unknown	
	4

Profession

Current or most recent employment	n=
IT	
Medical profession	1
Management/Finance	
Academic/Teaching	1
Public sector	
Professional other	2
Manufacturing industry	
Retail industry	
Self-employed	
Unemployed	
Student/Full-time education	
	4

Ethnicity

Ethnic group	n=
White English	1
White Irish	1
White Welsh	
White Scottish	
White other	2
Black African	
Black Caribbean	
Indian	
Asian other	
	4

FGD2

Age

Age	n=
<20	
20-30	1
31-40	1
41-50	1
>50	
	3

Education

Highest qualification	n=
SATs	
GCSE or equivalent	1
A-level or equivalent	
Degree	1
Higher degree	1
Unknown	
	3

Profession

Current or most recent employment	n=
IT	
Medical profession	1
Management/Finance	
Academic/Teaching	1
Public sector	1
Professional other	
Manufacturing industry	
Retail industry	
Self-employed	
Unemployed	
Student/Full-time education	
	3

Ethnicity

Ethnic group	n=
White English	1
White Irish	
White Welsh	
White Scottish	
White other	1
Black African	
Black Caribbean	
Indian	
Asian other	1
	3

FGE1

Age

Age	n=
<20	
20-30	
31-40	1
41-50	3
>50	
	4

Education

Highest qualification	n=
SATs	
GCSE or equivalent	1
A-level or equivalent	
Degree	3
Higher degree	
Unknown	
	4

Profession

Current or most recent employment	n=
IT	
Medical profession	
Management/Finance	1
Academic/Teaching	
Public sector	
Professional other	1
Manufacturing industry	1
Retail industry	
Self-employed	1
Unemployed	
Student/Full-time education	
	4

Ethnicity

Ethnic group	n=
White English	3
White Irish	1
White Welsh	
White Scottish	
White other	
Black African	
Black Caribbean	
Indian	
Asian other	
	4

FGE2

Age

Age	n=
<20	
20-30	
31-40	3
41-50	1
>50	
	4

Education

Highest qualification	n=
SATs	
GCSE or equivalent	1
A-level or equivalent	
Degree	2
Higher degree	1
Unknown	
	4

Profession

Current or most recent employment	n=
IT	
Medical profession	
Management/Finance	1
Academic/Teaching	
Public sector	1
Professional other	2
Manufacturing industry	
Retail industry	
Self-employed	
Unemployed	
Student/Full-time education	
	4

Ethnicity

Ethnic group	n=
White English	1
White Irish	
White Welsh	
White Scottish	
White other	2
Black African	
Black Caribbean	
Indian	
Asian other	1
	4

FGT1

Age

Age	n=
<20	6
20-30	
31-40	
41-50	
>50	
	6

Education

Highest qualification	n=
SATs	2
GCSE or equivalent	2
A-level or equivalent	2
Degree	
Higher degree	
Unknown	
	6

Profession

Current or most recent employment	n=
IT	
Medical profession	
Management/Finance	
Academic/Teaching	
Public sector	
Professional other	
Manufacturing industry	
Retail industry	
Self-employed	
Unemployed	
Student/Full-time education	6
	6

Ethnicity

Ethnic group	n=
White English	6
White Irish	
White Welsh	
White Scottish	
White other	
Black African	
Black Caribbean	
Indian	
Asian other	
	6

FGT2

Age

Age	n=
<20	7
20-30	
31-40	
41-50	
>50	
	7

Education

Highest qualification	n=
SATs	
GCSE or equivalent	
A-level or equivalent	7
Degree	
Higher degree	
Unknown	
	7

Profession

Current or most recent employment	n=
IT	
Medical profession	
Management/Finance	
Academic/Teaching	
Public sector	
Professional other	
Manufacturing industry	
Retail industry	
Self-employed	
Unemployed	
Student/Full-time education	7
	7

Ethnicity

Ethnic group	n=
White English	
White Irish	
White Welsh	
White Scottish	5
White other	
Black African	
Black Caribbean	
Indian	1
Asian other	1
	7

FGP1

Age

Age	n=
<20	
20-30	1
31-40	
41-50	1
>50	
	2

Education

Highest qualification	n=
SATs	
GCSE or equivalent	1
A-level or equivalent	1
Degree	
Higher degree	
Unknown	
	2

Profession

Current or most recent employment	n=
IT	
Medical profession	
Management/Finance	
Academic/Teaching	
Public sector	
Professional other	1
Manufacturing industry	
Retail industry	
Self-employed	
Unemployed	
Student/Full-time education	1
	2

Ethnicity

Ethnic group	n=
White English	
White Irish	1
White Welsh	1
White Scottish	
White other	
Black African	
Black Caribbean	
Indian	
Asian other	
	2

FGP2

Age

Age	n=
<20	
20-30	
31-40	2
41-50	1
>50	1
	4

Education

Highest qualification	n=
SATs	
GCSE or equivalent	
A-level or equivalent	1
Degree	2
Higher degree	1
Unknown	
	4

Profession

Current or most recent employment	n=
IT	
Medical profession	
Management/Finance	2
Academic/Teaching	
Public sector	1
Professional other	1
Manufacturing industry	
Retail industry	
Self-employed	
Unemployed	
Student/Full-time education	
	4

Ethnicity

Ethnic group	n=
White English	3
White Irish	
White Welsh	
White Scottish	
White other	1
Black African	
Black Caribbean	
Indian	
Asian other	
	4

Appendix 3 – Focus group scenarios

To help start off our focus group discussions, we've put together some cases that show how men who are fathers, or may become fathers, are treated at the moment in this country. We have outlined these below so that you can think about them before the focus group you attend.

While reading through these cases, we would particularly like you to think about:

How important you think it is that a man has a genetic link with a child i.e. that it was *his* sperm that helped to create the child

What you think are the things that make a man responsible for a child.

What you think are the things that mean a man has the rights of a father.

How fair you think these situations are for the men, women and children involved

Normal conception:

If a pregnancy is the result of sex:

1)

A woman can decide to continue with the pregnancy or finish it (using the 'morning after pill' or an abortion). If she has the baby then the man may be forced to give financial support to the child.

The man has no right to demand the woman finishes the pregnancy and he can't get out of financially supporting the child –even if he thought the woman wouldn't get pregnant

2)

If a man can prove that a child is not the result of his having sex with the mother, using a paternity test, then he doesn't have to financially support the child. This can happen even when the man, woman and child have been living together as a family.

If a paternity test proves a man is not a child's genetic father then he could lose all rights to see the child that he was bringing up as his.

IVF (test tube babies):

When a pregnancy is the result of artificial processes rather than sex:

3)

Sperm donors are volunteers who decide for themselves whether or not to donate sperm to be used to create a child. If their sperm is used and a child is born, they are not regarded as the father of the child and don't have any financial or other responsibilities to look after it. However, children now have some rights to identifying information about their donors.

4)

Both men and women who give sperm/eggs (gametes) for use in IVF can withdraw consent for these gametes to be used right up until the time when any resulting embryo is returned to a woman's body. This right is absolute and applies regardless of the reason that the gametes were given (e.g. in own treatment, donated or to preserve fertility, for instance in the case of cancer). The right of a man to refuse to allow frozen embryos to be used was recently reaffirmed in the courts. Both women concerned promised to waive all entitlement to child support etc and in one case it was the woman's only chance of having a genetically related child. In the case of frozen embryos, then, men and women are treated equally in that neither can become a father or mother against their wishes

5)

In a recent case there was a mix-up at an IVF clinic and a woman's embryos were fertilised with the sperm of a man who was not her husband. She gave birth to twins that had a different skin colour so the error was obvious from the start. The clinic discovered whose sperm had been used and that man has now been declared the children's 'father' by the courts. He could in future apply to have access to the children and the mother will have to ask his permission for her husband to adopt them.

Appendix 4 – Example of coded transcript

FGP1 (278:279)

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P-Docs P:8: FGP1 Trar 8:1 JJ Right... Memos ME_04/05/05 (1-76). Super

ok] as long as it doesn't impact painfully on the child and have a disruptive... any, any contact will be disruptive to a child because they're in a, they're in an enclosed environment of a family unit and you're outside of that family unit. It will always be disruptive. [JI. yeah], it is the courts... and the... whatever other support mechanisms are created in place when a break-up occurs that should be designed to reduce the impact of that, to create correct contact arrangement for that separated parent to be able to integrate into that child's life.....

JJ how do you feel about that ((to 2))

2 erm..... I was coming at, thinking about it from another tack though, erm... if I was raising someone else's child... if eth situations were reversed in my current relationship, then er... I think, if you're raising someone else's child and you're taking the role of a step-parent, I think you should have some rights but not as many... or as great a rights as the er biological father... because at the end of the day... if biological father's chosen to not be there, or can't be there... that child still needs... something from a male role model, but they need to also know that there is a difference 'this is not your father this is just... step-dad' or whatever term you choose to use, first names, I don't know'...((...))

1 [what about if that step-dad doesn't know the truth behind why the father isn't there, and he's taking on the role because he's being guided down that route by the, by the partner he's with... again it's a deception... you see, I'm talking from my experience right now, there's a boyfriend there now who does not know me... and he only knows what she's told him about me... and all of a sudden the contact have stopped the phone calls have stopped, does he know the real reason why... I don't think so, but I bet you he's got far more input to my children at the moment... and it, he will feel that because he's having a relationship with my ex wife, yeah, he will feel that because he's a part of that... the children are there, he should be nice to the children, look after the children, and do things, and it's not wrong to do that, on his part, but the deception is... that he's getting far more rights over my children than I am at the moment based on... the deception that's being caused... [JI. yeah]... and the father is this case... erm cannot have any impact... to... let him know that actually he is helping break the bond...

2 yeah, so I was... well that's what I was trying to illustrate not very well when I was saying I think, the biological father should have more rights than the... step-father, but... the step-father should have some 'cause obviously the... you don't want your kids having no contact with their step-father as well, they'd just be left with no male model, you'd rather he did something to help but don't want him to break down your relationship, or spread you further apart... so it's in their interest to have somebody there when you can't be... I'd guess, but you're still, you are still daddy, and that cannot be changed, that should not be changed, and no-one should interfere with that

JJ this feeds in pretty well with the second scenario, where erm if, say a ((1 interrupts))

1 sorry Jon, just a quick one on this [JI. yeah], are you actually separated now from your partner ((to 2))

2 yeah, erm... his mother, yeah

1 yeah, right, has she got another relationship going on at the moment

2 not yet

1 right, when she does, ok... and I'm not gonna ask you how you're gonna feel about it 'cause you don't know until it happens... ok, but what if she has a relationship that runs for three years, five years and she integrates him into your son your child's life, then it goes wrong... ok... that man's now no longer a part of that life... that child's life [2. hnm] ok [2. that's]... another two years time... or another six months time, another man is introduced into that child's life... and it only lasts six months... ok... it goes wrong again, and suddenly there's d another role model daddy [2. yeah ((Looking slightly nervous))] ok... ok it goes wrong, she's single again and now you have more contact because suddenly she hasn't got any objection to it, yeah, she hasn't got somebody else taking you role for a little while, yeah, you get more contact, start building it up, she falls in love again, or in lust, whatever you wanna call it, yeah... another relationship... and another man gets introduced into your child's life... ok, and suddenly the contact is reduced... it's not actually reduced... but the impact of your... er the impact of

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Biography Important
 Child's interest
 Choice
 Explicit terminology
 Father's rights
 Father's role
 Gender
 Implicit terminology
 Personal abstraction
 Rights restricted
 Role models
 Step-father
 Deception
 Father's role
 Father/child bond undermined
 Knowledge
 Paternal involvement
 Personal testimony
 Relationship with Child's mother
 Step-father
 Trust

Barriers to fatherhood
 Biology Important
 Child's interest
 Father's rights
 Father/child bond undermined
 Moral Sentiment
 Practicality
 Step-father
 Two fathers impossible
 Fact-seeking

Barriers to fatherhood
 Child's interest
 Father's interest
 Father figure
 Father/child bond undermined
 Paternal involvement
 Relationship with Child's mother
 Role models
 Succession of lovers

Start

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without IVF, incredible, and um she met this man um... within a week of the baby being born she just dumped him basically, he's completely left out of her life and she's bringing up this child on her own with hardly any money at all you know, to me that is really unfair, although I think in a way she's better off without him, ((laughter)) but, not that I've met him but what I've heard about him but still, you know, when you know when you go back to your thing, at that point the woman really really wanted to get pregnant, she really wanted to have a baby to bring into this world and to love it and everything else, and that's absolutely fine, but if the man doesn't want her to take, you can't hold him responsible now for something that he did you know, at a moment in time

1 But the law does though [4: Hmm, it does] the law says you know, you've got to do it, so whether it's possible to have a financial arrangement to say okay, the embryos are yours, you can have them, you want, you need to sign this off whether that still is a standing document in law [(you can do that)]

4 [You can, I think people do that and I think in this case it was offered [1: (...)]] I'm not [JI: Yeah it was] too sure what the child support agency would say ((laughter)) [(...)]

1 [exactly, you know, there's other considerations and

2 I think in that, in that, in this particular case the father probably thought that he, he thought the genetic link was probably the most important [4: Yes, I think you're right] issue, and he probably saw that as a contributing factor, I mean as we were discussing he probably saw that as something like ninety percent [4: Hmm, yes (...)] of the contributory factor of being a father and obviously (...) within us) we'll see differently er, (we're different, we'll see) somebody say how much does DNA contribute to being a dad...how much is it the emotional side, bringing up, I mean within us there'll be a difference, I mean I'm sure Jon will, as he does the rest of the groups, [JI: Yeah] um, he'll find out that other people have different views on this=

4 =Hmm=

JI =I was just going to ask, I mean, what are your views, I mean you talked about DNA versus the emotional connection, I mean what do you think, I mean does the DNA contribute more than that connection or is it the other way round

1 Father to child or child to father, because child I would think it's emotional because the child doesn't know any different well [2: (probably)]] probably not, yeah exactly, father to child hrrm, I don't know really, that's a=

2 =It's really difficult because, you know, having had children that are genetically linked to me it would be very difficult for me to know whether er if by any reason we wanted a donor that um, would...would I still feel the same [4: (...)]] it's hard to answer because this, you know, I didn't mind the way my brain thinks is er slightly different than this or maybe it's the same, if a scenario is not arising then I just block it out and it will never be looked at...and this is the first time I'm looking at some questions which I haven't even [4: Considered] I hadn't even considered when I was signing the forms that, you know, when I go to get the treatment we just go 'yeah, we'll sign anything yes, yes, yes, no, no, no', whichever ones...just to get the thing moving

4 I mean I think that's, if you go on to number five an interesting (...) is um, a mate of mine he was mixed race, his father came over from Ghana, he never met him 'til he was about fifteen, and erm...if you look at the issue of say that black child or the mixed race child and they registered this guy, it was totally not his fault...registered this guy as the father, now A you don't know how that father feels, I mean I would always wonder what my child was like, um and also they give the impression that maybe he has not fathered any other children [3: Yeah], um with his partner or anyone else, I think that would be a, I think that scenario for me would be nearly always on my mind [JI: Yeah] and I think that that would be very hard, and that's why I thought well maybe that's how this other guy felt, um but I was talking to him and, you know, and he said well, he said given that that child is being brought up in a what you know, is a white environment er, you know, he said you would have to take care of his cultural and needs to know, you know, where he's come from et cetera er, again for the child in that scenario 'cause it's so obvious I think that would be very hard ((murmured assent)). I mean it made me think you know, I think I'm assuming my daughter's mine I

Moral Sentiment
Mother's Interest
Personal testimony
Property
Single parenthood
Status of the embryo

Contract
Father's responsibility
Law
Money
Practicality

Biology Unimportant
Emotional connection
Motivation
No universal solution
Relationships important

JI summary/clarification/question

Biology Unimportant
Child's perspective

consent
Experience molds understanding
IVF process

Child's interest
Cultural heritage
Father's interest
Personal abstraction
Personal testimony
Physical resemblance
Race
Uncertainty

Scenario 5
Biology, Important

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Appendix 5 – Transcript extracts showing facilitator interaction

Extract from FGP2 (74:92)

J1 So I mean would I be correct in kind of summing up that the prevailing view seems to be that um, men and women should both have an equal input in the abortion decisions ((murmur or assent)) So um can I put an argument to you that's been used recently [3: go on] um, it's been suggested that because women make the choice um, whether or not to keep the pregnancy and whether or not to terminate then they essentially get two bites at the cherry, they can choose to have sex and then they can choose whether or not to terminate and the idea that's been put forward is that men shouldn't be held responsible for that second choice so just as the woman has a choice to opt out at that point so should the man, and this goes against the kind of current trend of saying well if a woman chooses to keep the pregnancy and [3: against the man's wishes] carry to term, yeah, that um the man nonetheless has to support the child [3: I agree, I agree], what are your thoughts on that?=
 =

3 =And er, you know I would hope that people feel that they have an obligation, a moral obligation, but there shouldn't be any legal kind of, um.....determinant as to whether they actually should be financially liable for this individual, at the end of the day um, as I said, both parties can actually agree to terminate or disagree to terminate erm, but in the case of let's say if, if let's say the mother chose to terminate but somehow the actual father managed to actually convince her to go to full term he would, you know, and she didn't want to be financially responsible for the child she should be in an equal, you know, situation (saying) 'I've done my bit [4: yes] now that's done I'm out', you know, and the man can be financially responsible [1: yeah], it's equal that way but at the end of the day, at the moment you are right, they do get two bites at the cherry and it's definitely not equal...

1 I would [agree]

4 [Yes I would agree with that, definitely, wholeheartedly, [yeah]

1 [Whichever one decides they want to keep, if it's against the other's wishes is the one that should take the prime responsibility for raising and providing for the child...doesn't mean the other one doesn't have you know, can still contribute should they wish but you know, if I have insisted that she keeps the child then the child is my responsibility from birth=

3 =Yeah, and if the mother doesn't want to have anything to do with it, not even contribute financially well that's [1: that's fine] fine that's her [choice]

1 [That's the adult response to the situation=

4 =Yes it is

1 We're not forcing either to do something against their wishes...

4 Well, I think you've hit the nail on the head there, it's the adult response it all comes down to doesn't it, being aware and planning and thinking ahead, [1: hmm] often this isn't the case in life isn't it [1: no it's not], in this culture nowadays, I want it now and you know there's no... ((inhales)) real thought goes [1: hmm, hmm] into...

Extract from FGA1 (821:849)

Jl So the general gist I'm getting is the decision should be made on the basis of what is best for the child?

((all the group here talk over one another, and exactly what they are saying cannot be made out. It is clear that all agree with Jl's interpretation, and they were all nodding and making physical gestures of agreement...2 sec...))

4 yeah I think, I think there's an opportunity in that to actually bring those two families together and have something which is a little bit different from a... 'this is your dad, this is your mum [2: hmm], this is the close nit thing' and develop a a link between those two families...to have a lot less clear cut and lot more...culturally kind of, you know...erm broader and have a bigger...extended family, I think I think there is an opportunity there to be able to say [3: that's be a good idea] (.....), and you could put those, those two families in a room...and say 'fight it out between yourselves' and you could come back ten years later and they won't have agreed

1 no

5 I'd be interested to able to come back in ten years and see exactly what has happened

Jl hmm

4 yeah

((4 sec))

Jl we're coming towards the end...I just wondered before we finish is there anything that's been...bugging somebody...you wanna say about any of the cases or just finalise what they think or...((various members of the group look down and shake their head))...no.....no.....ok=

2 =yeah actually, erm ((loud laughter from the whole group))...

3 'now you mention it...' ((over the laughter))

5 there's always one... (over the laughter))

2 the thing is in this discussion we've really discussed parental rights and fatherhood just in terms of conception...urm, but number five touched on it quite early on regarding step parents, and we've not really covered that yet...I was just wondering what the reason was was there any particular reason why that wasn't included?

Jl Um well the idea of looking after someone who's not genetically related was intended to be covered in one and two [2: oh one and two] [3: hmm] yeah, we've not specifically talked about step parents, but if you'd like to we can do that certainly...((to all))...do you think it's important that....

4 hmm, the single mother I was referring to before with three boys, um she is just , she's in a stable relationship now with a man who's prepared to become...effectively the father of those three children and I think that's an incredibly brave thing for him to be doing, I think it's a very positive thing to be doing, but unless they get married and formalise adoption...then there is nothing to actually back up that relationship, and so they've been together now for five years and the kids refer to him as dad...now from the children's perspective he is their father...and, you know, he is therefore...created his own responsibilities

Extract from FGA2 (1014:1052)

Jl I seem to be getting the impression that you're...generally speaking, saying the fatherhood is kind of a...conglomerate of rights and responsibilities

4 yes

1 yeah

Jl and the impression I'm getting is...they can't be separated...is is that how. how you feel?

3 me personally yeah, I think they're inextricably linked, the rights and responsibilities...I think it's very hard to have one without the other...[erm

4 [we:ll I think we've given a couple of cases there, I mean the rapist...we take all his rights away but we still will give him responsibilities...the donor.....we give him neither rights nor responsibilities...[2: hmm] so I think that, I [think we have a number of situations

(?) [(.....)]

1 well the donor has rights to anonymity [until the child's eighteen doesn't he

4 [ah, yeah, ok

1 [some rights

4 [but rights about fatherhood

3 but it's almost a reverse right isn't it, it's not like a right [4: yeah] with regards to [access to the child (.....)]

2 [he can't find out what happened to his donation

4 it's a right to not have something happen

3 yeah

4 yeah, that's a good thought

Jl this donor is interesting, because children, when they're eighteen now have rights to find out [4: hmm] their genetic father, which seems to imply that, certainly the law...and this was informed by public consultation...that, it's important for the child...to know who it's genetic father is...now if it's important for the child, do you think it should be important for the father

2 [no

Jl [for the donor

2 the act of donating sperm negates, well we think it negates your rights and responsibilities in the future...er...you know, if you were doing it from an altruistic perspective you're thinking of some couple somewhere, where the father for whatever reasons cannot...get the the the man cannot get the woman pregnant for whatever reasons...and you're looking to build up a relationship and let them have a child, and as far as the world can see...that is their child and that's what you're trying to do, I.....I don't think you've got any...rights, you should have no rights or expectations thereafter [(?): hmm]...I'm surprised actually that...the the child has the right to demand to know who the [parent is

Extract from FGD1 (401:427)

Jl can I just...another group suggested that, they were putting themselves in the position of, of sperm donors, and we were talking about this number three ((indicating scenario sheets)) where children now have a right to identifying information, and they were thinking about what they would do if a child turned up on their doorstep and said 'hello...dad'...and they were thinking about whether or not they would feel responsible and the group was divided...some thought well...yes, you'd feel responsible because you would see...this physical resemblance, and some thought well, no, you wouldn't, and it turned out that even the ones who said you would feel responsible didn't think there was any kind of obligation, but they just thought they would feel responsible...and I wondered what you thought about that

1 [well I'm not sure what

2 [I'd agree, I'd agree with that last thing, yes, you'd just sort of feel that you were responsible because could helped erm put the child on the, on the earth, if you like, but yes you wouldn't have any...erm, other obligations.....

1 I think it's interesting you ((to Jl)) said because, because the child looks like me [Jl: yeah] or something, well I remember when I was younger somebody said I look like ((a well known celebrity)), now I don't feel any responsibility for ((the well known celebrity)) just 'cause I once looked a little bit like him [Jl: no] and it's, I'm not sure that's any different actually...erm

4 but isn't that, that comment about a [child looks like you simply a sort of

2 [no, that's completely different

1 why?

2 well 'cause you know you're not related to ((the well known celebrity)) so

1 well I don't actually, but but I I'm sure I'm not but ((laughter from the group)) but, but I I'm I don't see why that's relevant, [I'm not, I don't have a social relationship with

4 [I would say it's relevant because in the, in this case where...the child is presenting at your doorstep...the simple er commonality in your phenotype, your appearance, reinforces the gene connection...that's all

3 yeah, well no, I mean it clearly is, you know, there is a, a visually, you know, eighty per cent of what you know comes from, er, you know, er, what we see and, you know, it's vital when you look at somebody, you know, it's fascinating and kind of exciting if you see...you know, I mean, that's a kind of...Darwinian biological urge isn't it, boys wanna (...) er we're primed to reproduce [(unidentified snigger)] and, you know, the more the better, right ((laughs))

4 I think it's about, it's probably

2 I don't think it's gonna go away otherwise erm, er, erm mankind would fall away...you'd have a diminished birth population [?: well it is going away],well exactly because of (...) being distorted

Extract from FGE2 (165:177)

J1 **Something you said earlier made me think about something, um you said that if you were...erm your partner got pregnant and you stayed because you thought it was yours [1; Yeah], that seemed to suggest, what you seemed to be saying was that you know, your responsibility was based on you being the genetic father [1: Yeah] do you think that's true across the board, do you think it's that genetic connection that gives you responsibility and you don't have responsibility if you're not the genetic father, is it clear cut, are there [(...)**

2 [I think with the law it's, the law goes with that doesn't it if you are the genetic father you have a responsibility okay there are cases like number three, sperm donor that er, did not have responsibility er, especially (...) the law was changed wasn't it, for that, I don't know when it was changed but er, I do feel um, the law makes a decision that if you're the genetic father you have responsibility and then=

J1 **=Do you think that that's right though?**

2 Whether that's right er to an extent I agree with it to a certain extent yeah, yes you, you know, you did...you've brought a life into this world and I, we should make sure that you take care of that life

4 I suppose we're sitting here going through a situation where again going back to this guy that just has kids at any time he wants, I think the four of us sitting here are going through a situation where you make a conscious decision to say I want children and actually it's been denied you in a natural way (...), so you, that situation of fatherhood and passing on your genes and getting some you know, having a child is I think it makes you think more about what you're doing whereas just going out on a Friday night, sleeping with someone and okay you have an accident, um, and whether you think you've got a right to, to a genetic link or the right of fatherhood to, to that situation is slightly different, I mean again, you know, I don't know whether I had any close misses but I remember when I was about seventeen, eighteen having a few close misses with a girlfriend, was probably you know, probably wasn't at the time but...yes, conscious decision there let's not do that again, I'd had a long term relationship with the girl but, you know, further on in my life, you know, you've slept around a bit um, whether or not I would have felt a real...er connection if somebody had got pregnant where I've had a one night stand I'm not too sure but that's, again it's a different part of my life and I hadn't gone through the situation of thinking I can't have kids

1 But when you were younger I mean, did you not, I suppose it's down to the individual, obviously there's a moral obligation... say if you got someone [4: Yeah] (...) someone that you, eighteen, you had a one night stand, [4: Yeah] your kid [4: Yeah] would you perhaps not feel...depends how [(...)

4 [I would, I would feel as if I was responsible for that child [1: Yeah] yes, um but the relationship I would have had with that child...I don't know what it would be, if say that person decided to go ahead with it [1: Yeah] but that point in my life I wanted to go to, you know, university etcetera I'm not sure I would have persuaded them to, well hang on it was, hang on you know, let's not let's not go there...um although I don't really again because of what I've gone through I my life, my attitude toward abortion now is totally different to what it was when I was nineteen, and again I think the situation is different because of what we've gone through=

Appendix 6 - Extracts from member validation report

Extract from FGP2 report

Initial thoughts and overarching themes

The most prominent theme to emerge from this group was the acceptance of the 'fragmentation of fatherhood' (Sheldon), insofar as the group considered there to be many different kinds of father and many ways of fathering. Given this, they then tended to think that the important question was not 'is this man a father?' or even 'who is the father?', but rather 'is this man a *good* father?'. As such, they did not tend to engage with classifications or definitions of fatherhood, but instead focused on an evaluative project, placing the different kinds of father and different ways of fathering, within a moral hierarchy, the most valued of which was the involved social father, and the least valued the biological progenitor.

The group tended to feel that a man should be held responsible for his actions and his choices, but that this responsibility should be shared between father and mother and dealt out proportionally. They felt strongly that all the rights currently afforded to the mother of a child should also be available to the father, including the right to raise the child alone if the mother does not want to become a parent. It was thought that it was not right for mothers and fathers to have unequal rights simply because of the biological accident that means a man cannot gestate a child. Whilst it was acknowledged that a mother has certain burdens that a man does not, this was not always thought sufficient to warrant different treatment, as it is not a choice that has been made but, rather, a biological necessity. Also expressed was the desire for men to have more influence over termination decisions, and in the name of equality it was suggested that a man should be able to insist that a woman go through with a pregnancy she does not want and then hand the child over to the man to raise alone – just as a woman can do currently. It was also suggested that in such a case, the woman should have no parental obligations, just as a man should have no parental obligations if a woman chooses to go ahead with a pregnancy that was unwanted by him.

The group tended to agree that overall the child's interests must be protected, and that the child's needs and welfare should come before everything else.

Themes

The fragments of fatherhood – genetic roots and social value

4 ... I think a lot of it is to do with...the psychological and the emotional side, it's ...the emotional the psychological side that's important, I think the support and being that balance in this difficult society of today of the male female bringing the child up in that balanced environment, that's how I feel...

1 I wouldn't totally agree there... I would say what makes you a father is the genetics, the sperm, what makes you a good or a bad father is exactly what you've just explained ((murmur of agreement)) (14:16)

The group tended to think that there were lots of different kinds of father, some genetic and some social, for which they have different names, including 'genetic father', 'genetic parent', 'father figure', 'parent-guardian' etc. Thinking purely in terms of definition, the group tended to reserve the word 'father' for the 'male genetic progenitor', but this use does not belie any kind of evaluative process. It became clear that being a 'father', insofar as one is a genetic progenitor, was not particularly valued in itself, and that what counts is being a 'good father', which involved forming a loving and nurturing relationship with one's child.

3 Yeah I mean there is a distinction between a genetic parent and a father um, a father's the one with obligations, the genetic parent (the one with not) um, and I would say the genetic parent's a mother, and then father and mother technically should mean the same which is basically a nurturer, someone who's actually raised um, that child...[J1: okay] and you can have something like guardian-nurturer as well, which is someone who's not genetically the parent but has actually also had an active hand in raising the child and also had a responsibility, also have a stake in that equation and also have rights...330:330

A clear preference was established for the social kind of fathering over the genetic, and it was felt that it is the social kind of fatherhood, or being a 'parent' or 'father figure', that brings with it both rights and responsibilities:

1 ... I think we all agree that fatherhood was, being a father was the point of insemination, a good or bad father is the level of contact and involvement you have [4: that's right] now, that so, but again just because I've now been possibly robbed of the genetic side of it, it doesn't stop me having been a good father because I (...) my son, took him on as my son and so that father inside of me which would now be termed as guardianship, I have proved to be a good guardian and I love that child as he was my own and hopefully he is=

3 =and your rights should be preserved=

1 =yes, yes (170:174)

Conversely, being a genetic progenitor, or a 'father', was not thought to bring with it any particular rights or responsibilities:

3 I'd say that er, in my in my vernacular the word father means that you've actually got a, an obligation, you feel an obligation, as a genetic parent you don't necessarily have to have an obligation um, you've just sired a child, they're genetically yours but you may not actively be raising it or want to be raising [4: that's right] it, um whereas in the case of father I would use that term specifically for someone who's actually consciously gone and been involved [4: sure] in raising the child and

1 Yeah

4 I'd support that (314:322)

It should be noted that in the passage above the participant's use of terms was not consistent with the definitions he has previously given; and the term 'genetic parent' is used to refer to what he had previously called the 'father, and 'father' is now used to refer to the man who raises the child. This mixing of terms occurred throughout the discussion and became quite confusing at times. Even though the sentiments expressed remained constant, the ways in which they were expressed varied. In the passage below, the word 'father' is used to refer to the genetic progenitor, and then latter it is used to refer to the man who has nurtured the child in the absence of a genetic connection.

Extract from FGT2 report

Initial thoughts and overarching themes

Generally speaking, this group conformed to the general findings of the project. A tension between the 'intellectualisation' of fatherhood as a social relation consisting in role fulfilment defined in terms of acceptance, care and investment, and the 'feeling' that the genetic connection is a vital aspect of fatherhood, was very evident, and was played out in various ways throughout the discussion. The emerging narrative was one of fatherhood being constructed in a number of different ways, but always standing in relation to the 'fatherhood ideal', which tended to be characterised as the 'complete father'. The constituent parts of this ideal then tended to be ranked, with moral priority being attributed to the social aspect of fathering, but always with the very significant caveat that they would feel there would be something missing if there was no genetic link.

The father role tended to be characterised as breadwinner, moral teacher, and carer, in no particular order or hierarchy, although it was clear that there was a general feeling that a father should be intimately involved in a child's life and would be considered to be failing if he was not. A father's responsibilities were thus defined in terms of fulfilling the father role, and the perceived obligation to fulfil that role was thought to have a number of possible sources, ranging from simple casual agency to voluntary acceptance to the relationship with the child's mother. The group were united in thinking that once responsibility had been generated it was not easily escapable.

Another feature of the discussion was that it was predominantly child centred. By this I mean that the group tended to see the child as the central figure, and the purpose of the other stakeholders was essentially to facilitate the development of the child. Thus, a picture of fatherhood (and indeed of parenthood) was painted in which the father exists for the sake of the child, and on this kind of model there is little room for talk of father's rights. It is, then, within this kind of context in which fatherhood was constructed predominantly in terms of responsibilities, and in which the genetic connection generally comes second to father/child relationship.

The issue of father's rights was less openly discussed, and there tended to be a feeling that it was wrong to characterise fatherhood in terms of rights and, rather, it should be constructed in terms of responsibilities

Themes

Father's role

The group tended to see the role of the father as consisting in a variety of different social functions. A father was characterised as a man who looks after a child in a particular way, whose presence and input is sustained over a period of time, such that he can be said to be 'bringing up' the child.

2 *They've got to look after a child, and have some part in it's upbringing [?: Yeah] and the rearing of it, I mean you probably can't just abandon a kid and then come back twenty years later, ah I'm your dad now...nice to see you and all that, doesn't work right like that (25:25)*

3 (...) his responsibility is not, his job isn't done once the baby's born but he still has to develop the baby, he still needs to teach it, he still needs to do all these things for it so that's...he's far from over once the baby's born (228:228)

The role of carer and nurturer was fundamental to the group's construction of fatherhood. The idea of self-sacrifice and putting a child's interests before your own was also raised, and 'involvement', simply being available to the child, was key.

8 *Okay then, um well firstly they have to look after the children properly and like take care of, put, well put them before yourself er...*

1 ... You have to be involved in the child's life

8 Mmm (13:17)

The father's role as a moral teacher and role model was also emphasised. It was considered a particularly paternal role to instil values into a child and provide a moral education, acting as an exemplar for the child to emulate and model him or herself on.

6 (We have to give a) kid a good grounding in what's right and what's wrong ...that's, like, important, I think that makes a father if you make someone know the difference between being a good person and

8 Being a role model

6 Yeah

8 To be a role model... (27:33)

Breadwinning was also considered to be a part of the father's role, although pains were taken to emphasise the belief that fatherhood is much more than simply providing financial support.

4 But he can't like force her to carry the baby if she doesn't want it, [?: Exactly] she's gonna be carrying it

3 (but then in the same park, you've gotta say) that the man could be forced to... support them

5 Exactly, 'cause then it's the man that's carrying that child so to speak for the rest of his life...with financial support

2 But there's more to having a baby than financial support

5 But it's a huge factor in it, (you) pay for the child, (they are) expensive little buggers after all (126:134)

For this group, the image of the father is of a man who takes on a variety of roles and functions within a family. A father is a consistent caregiver and nurturer, a moral teacher and a breadwinner. This suggests that recent accounts of the ideology of fatherhood might be mistaken in their assurances that fathering ideology has shifted to an androgynous carer model, and implies that such ideology has nearly been incorporated into the traditional 'breadwinning' and 'moral teacher' models. This lends itself to the theory that the development of fathering ideology has not been a matter of successive ideologies dislodging and replacing their predecessors, but of new ideologies being *added* to existing ones, creating an ever more complex web of roles and expectations, arguably making the ideal increasingly difficult to realise.

More than genetics

It was generally felt by some members of the group that fatherhood should be constructed in social, rather than biological, terms. Primarily, fatherhood was thought to consist of role fulfilment and nothing more. This seemed to mean that so long as a man was fulfilling the father role (i.e. nurturing, loving, providing, teaching, 'being there') then the man is a father.

2 But I don't think it's like that important 'cause as long as you look after a child it doesn't really for me have to be biologically yours [4: Yeah] like adoption and stuff like... (43:47)

Conversely, the absence of that role fulfilment means that a man is not a father, regardless of any biological claim he might have.

3 Before we said that a father is someone who should be responsible and everything, and a responsible person wouldn't leave so therefore he isn't really a father (176:176)

3 =The father should be the one that has the most, that shows the most responsibility for the child, is willing to put enough, more of their time and resources and to bring up the child, the one who walked out...if it was me deciding in some sort of court or something, you walked out, that's a bit irresponsible (391:391)

This characterisation of a father as someone who is 'responsible' entails, by definition, that any man who does not demonstrate responsible behaviour towards a child cannot be

considered a father. For participant three, the simple act of walking out on a child is sufficient evidence of irresponsibility, and is an explicit expression of a 'father is as father does' position. A father, we are told, acts in certain way; and if a man does not act like a father, he is not a father.

Participant eight added another dimension by claiming that fatherhood is in some way constructed proportionally as a bond develops between a man and a child, such that once that bond has developed, biology does not matter. Furthermore, this bond can be formed even whilst the child is still in the womb, and need not be reciprocal. Simply 'expecting' and 'looking forward to' a child, presumably with all the trappings that go with preparing for a baby, was thought to be enough to generate the kind of paternal love that would not be affected by a discovery of a lack of genetic parentage.

8 *If it's like after a couple of weeks you're told or something, that it's not yours any more...it's still the same I think because you've been, well presumably you've been expecting the child with it, so even though it's not there you do grow to love it [1: yeah, that's true] or you know, um so I don't think age has any affect on it, whether it's old or young*

J1 *Is that for the child or for the man?*

8 *Erm, for the child if, well if the child's young um like if the father was told a couple of weeks later...um, I don't think it would make any, if, it wouldn't affect um the fathers as much because um it's still, he's still, he's been looking forward to this for nine months or whatever so he's he still has a right to... (296:300)*

The idea seems to be, then, that despite the genetic connection having some bearing on fatherhood, it is, or should be, trumped by the father/child relationship. Here, the genetic connection is not considered unimportant; it is simply ranked much lower than social connections. Participant three later reiterated this point, claiming that a man would simply not care if the child he was raising turned out not to be genetically his. After all, genes are just chemicals, and chemicals are not a defining marker of fatherhood.

3 *...if you're bringing up a child you would, not care for whoever has put genes into this child 'cause it's just chemicals at the end of the day it's still a child...(489:489)*

Appendix 7 – Examples of participant feedback

Extract from e-mail from FGD201

Hi Jon.

Fascinating reading your insight and comment into the discussion, glad it supports the hypothesis, but christ, you never realise how many ums, errs, ahs, dunnos, younos, you place in your spoken tongue until it is written down. I need some elocution lessons, STAT.

- a) do you think I got it right? Yes
- b) do you think I missed anything important? No
- c) you you think I emphasised something that was not important? No
- d) do you think I misunderstood or misinterpreted you at any point? No

I can't believe how much work this project must entail, incredible, and that was just from one discussion group. Good stuff. I would love to find out the results overall, very interesting, even the abstract would be great.

Many thanks

Extract from e-mail from FGP201

Hi John

Thanks for this.

My feedback is:

- 1) Do you think I have missed out anything important?
No
- 2) Do you think I have included or emphasised anything that is not important?
No
- 3) Do you think I have misinterpreted you or misunderstood you at any point?
No
- 4) Do you think the analysis gets it right, and captures the view of the group, overall?

Yes, particularly the confusing use of the term 'father' I was very conscious of how we all seemed to use it for both raising and insemination.

I guess we all want to be thought of as fathers rather than inseminators?

Extract from e-mail from FGE203

Hi,

I have had a chance to go through. i think you have done an excellent job.

A few minor points:

Pg 4. My comments about feeling weaker I think need to be understood in a bit more depth. Once always presupposes a relationship with 2 equal parters. I am sure this is rarely the case & certainly not in mine. i would say my wife is more cofident. Hence in this situation it could leave me further paraylised. However this is not to say it could not have happened had we had a "normal" pregnancy situation.

I agree with your conclusion that fatherhood is multi-facted but then so is motherhood. There could be similar situations with a biological mother not bringing up children etc. I guess the obvious point is that a child does need male/ female to facilitate conception ie one level. After that the permuations are pretty endless and potentially very complicated. If ones want to put the child first then a loving , caring upbring is surely the most important thing!

Hope this makes sense.

Thanks for sharing.

Extract from e-mail from FGE202

Hi Jon

I apologise for the delay in replying to your email

I think you have accurately described what went on in the group - including the slight change of tone when you began recording as we were having a discussion during the break.

I think you have correctly emphasised the fact that within this group that fatherhood is seen as a whole - and that it is not simply a case of being a dad - there are several aspects to be considered in being a father.

I hope my simple answers go some way to help your project.

Best wishes

Extract from e-mail from FGS204

Hi John

in response to the summary

I would make the following comments

I don't think the group were by nature mysoginistic

due to the specific nature of the group men parted from their children it is inevitable thay they would have had negative experiences if only because the family court system is by nature adversarial and creates an oportunity for contesting parties to be negative towards each other to portray personal weakness to justify the individual as unfit to have contact/ residence of a child Please note residence is the new term for custody.

Don't confuse bitterness towards a former partner as a general bitterness towards women. Most spoke about their ex so they were speaking in a very personal context.

The cautious approach to women when embarking on a new relationship is no different to the cautious approach that women who have had negative relationships apply in their dealings with new potential partners.

What men are scared of is ending up with a woman who would do the same ie. if the relationship ended put up barriers to seeing the child etc. so it is more about protecting themselves than anything else.

I did play devils advocate often because I have a black experience where black men fathers have distinct negative stereotypes that impact on us people as well as fathers that is not reciprocated for black women.

Black people are more likely to be adversely affected by miscarriages of justice hence my objection to a blanket no fathers rights idea that the group had for convicted murderers.

I know I mentioned as a key issue the inequality that gives a mother automatic rights and an unmarried father non as a fundamental flaw

Going through the court system is not necessarily an acceptance of the legality of the court process particularly if the foundation of that court system is grounded in inequality.

It is a means to an ends .

I had to go to my childrens school in the morning to see them when the court refused my application for an emergency interim contact order after my ex stopped them seeing me because I believed that the courts decision was morally wrong

The fatherhood movement is gathering momentum but you have to work within an unequal system until you are able to change it.

I don't think there is something that you could call the group view. As I said in my previous email when it came to the idea of other men being seen as the father to their children the notion of the social father soon diminished in importance when compared to the biological father .

you could have a general view that a child does not call another man father/dad but not all would go to the extremes of having it in the court order. From my own experience the quality of my contact with my children and relationship with them is sufficient for me to know that they would not even consider it.

My father hood experience has been one of post separation struggle for everything and so I would not be happy for someone not biologically attached and who has not been part of their upbringing to casually assume the role by wanting to be called Dad. Much as I don't like my ex partner, I would never allow my new partner to be called Mom by my children no matter how well they got on because she simply is not.

Best Wishes