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**Abstract:** In this paper, I explore the ways in which consideration of adolescent parents forces us to confront and question common presuppositions about parental rights. In particular, I argue that recognising the right of adolescent mothers not to be forcibly separated from their newborn children justifies rejecting the notion that parental rights are (a) all acquired in the same manner, and (b) acquired as a ‘bundle’ of concomitant moral rights. I conclude that children and adolescents who conceive and give birth have some parental rights concerning their newborn children – in particular, the right not to be forcibly separated from those children – even if they do not have the ‘full complement’ of parental rights as we generally characterise these.

**Keywords:** Children, parenthood, rights, pregnancy, childbirth, motherhood

**Gestationalism and the Rights of Adolescent Mothers**

**1. Introduction**

Reproduction and the rearing of children, and the moral rights and obligations of those involved, are subjects to which philosophers have devoted significant intellectual energy. In particular, they have inquired into the scope of parental rights and obligations, and the means by which they are acquired. In this area of applied philosophy, parents are generally taken to have obligations to care for, raise, and nurture a child within a particular kind of intimate relationship (Brake, 2010, p. 161; Weinberg, 2008, p. 167). Parental rights, on the other hand, are generally taken to comprise rights to custody of one’s child, and to make decisions regarding his/her education, healthcare, and moral and political upbringing (Archard, 1990, p. 184; Montague, 2000, p. 47; Page, 1984, p. 196). Alongside this literature on parenthood, there is a substantial body of work concerned with the moral status of children. Some philosophers have argued that children are beings with special moral status, whose vulnerability and lack of maturity both results in special duties on adults to protect them, and precludes their having rights to engage in activities such as voting, paid employment, or marriage (for example Archard & Benatar, 2010; Ferdinand Schoeman, 1980). Others have argued for the ‘liberation’ of children from restrictions on their autonomy (for example Cohen, 1980; Firestone, 1970; Holt, 1975). As one might expect, philosophical work on the rights and obligations of children intersects frequently with work on parenthood.[[1]](#footnote-2) It is therefore striking that neither of these overlapping spheres of philosophical work has yet (as far as I can find) considered the ethical implications of reproduction by children.

In this paper, I argue that gestational mothers have weighty rights in relation to their newborn children, and that these rights may restrict the manner in which parental obligations to both children can be fulfilled. The right not to be forcibly separated from one’s newborn is grounded in the more general right not to be subject to grave harms, and thus applies regardless of age, social position, or the existence of other rights and/or obligations concerning one’s offspring.

**2. The Uncertain Moral Status of Adolescent Parents**

As Schapiro notes, ‘we tend not to hold children responsible for what they do in the same way that we hold adults responsible for their actions’ (1999, p. 717). She describes childhood as a ‘normative predicament’ – a child’s agential incapacity disqualifies her from both moral responsibility and liberty rights (p. 730). Adults, on the other hand, (absent factors such as coercion or diminished capacity for reasoning) are near-universally taken to bear moral responsibility for their actions, and often for the actions of their young children.[[2]](#footnote-3) There is no comparable widespread agreement regarding the moral responsibility of older children, or the extent to which responsibility for their actions might be passed to their parents.[[3]](#footnote-4) This may be partly because characteristics generally taken to determine moral responsibility (such the capacity for rational thought) cannot straightforwardly be ascribed to a child as they reach any particular age. They certainly do not straightforwardly coincide with the development of reproductive capacities; a child may become biologically capable of reproducing as young as 6 or 7, but most would agree that a child of this age should not be held morally responsible for their actions in the same way as an adult.[[4]](#footnote-5) We can make similar observations about our ascription of various moral rights to young children and adults on the one hand, and older children on the other hand: the moral status of older children is significantly more ambiguous than that of young children and adults. Parental rights and responsibilities are a particularly interesting example of this, because:

1. We cannot make a comparison between adolescents and young children, since the latter are not capable of procreating or caring for other children; and
2. Certain parental rights and responsibilities are taken to correspond to the rights and responsibilities of children themselves.

Adolescent reproduction is thus a situation in which questions concerning children’s rights/obligations and parental rights/obligations intersect in a particularly thought-provoking way. However, questions about the rights of adolescent parents have largely been overlooked by philosophers working on parenthood. This may be because much of the research undertaken in this area focuses on problems arising from reproductive technologies available only to adults; reproduction by children is (in Western culture) something which we tend to work hard to avoid, rather than to enable. Nonetheless, while most will agree that it is far from desirable for children to have children themselves, it is a situation which can and does occur (albeit with greater frequency in some parts of the world than others). It is therefore important to consider how the balance of rights and duties is to be understood in such cases.

As Montague puts it, it is a commonly held view that ‘parents who love and care for their children have right (perhaps within broad limits) to determine how their children should be educated, what sort of health care they should receive, what (if any) religious doctrines they should be encouraged to accept, and so on’ (2000, p. 47). I presuppose here that children and young adolescents do not have (the full complement of) parental rights, understood in this way, over their own offspring.[[5]](#footnote-6) A 10-year-old girl may be biologically capable of conceiving, gestating, and giving birth to her own child, but as long as we presume that she does not have full liberty rights regarding her own education, living and travel arrangements, and healthcare, it would seem strange to suppose that she has the right to parent her own child, where we take this to include making similar decisions for that child. However, I will argue here that denying that children have the right *to* *parent* does not entail that they have no parental rights. On the account I defend here, we may accept that a young girl may not have the parental rights to decide on the medical treatment of her own infant, discipline the child, or undertake other parts of the traditional role of parent, while also accepting the possibility that she has other rights concerning her child, which might be understood as parental rights.[[6]](#footnote-7) I will first argue that the gestational mother of a child (whether that mother is a child, adolescent, or adult) has a right not to be forcibly separated from her newborn.

**3. Gestationalism and grave harms**

In this section, I present an argument for a limited form of gestationalism. Broadly speaking, gestationalism is the view that initial parental rights over a child are acquired through gestation and childbirth (though gestationalism is compatible with the belief that parental rights may be acquired by other means – for example, by carrying out the work of parenting). Different forms of gestationalism have been defended in recent years; one notably proponent of gestationalism is Gheaus (2018), who argues that gestation is a means by which a parent enters the intimate parent-child relationship, and that we have the right to maintain such intimate relationships. Another example – whilst he does not describe his account as gestationalism – is Millum’s ‘investment’ theory, in which he argues that gestation constitutes parental work which will ‘substantially outweigh’ that carried out by others during the course of pregnancy and childbirth, thus giving the gestational mother ‘a massive majority stake in the child’ (2010, p. 123). In this paper, I defend a restricted form of gestationalism. I argue that gestation grounds a strong negative right not to be forcibly separated from one’s newborn. I deny that all parental rights are necessarily acquired concomitantly, but leave it an open question whether further parental rights (such as rights to full custody, care-related decision-making, etc.) may be derived from the right not to be forcibly separated from one’s newborn.

There are certain harms which may be characterised as *grave* harms, such as the torture of a child. I assume here that most will recognise the forcible separation of a mother from her newborn as a grave harm. Our condemnation of the treatment of girls and women detained in Ireland’s Magdalene Laundries (for example) is not only a condemnation of violations of their right to freedom and bodily autonomy, but also recognises the grave harm inflicted on women and girls in having their newborn children forcibly removed from them and adopted without their consent. ‘Forcible separation’ does not refer only to the use of physical force to separate a mother from her newborn, but also the use of coercion, blackmail, deception, or (threatened or actual) legal prosecution. A woman who is unwillingly placed under general anaesthetic, and who wakes up to find that a caesarean section has been performed and her newborn taken into custody by a third party, has as much right to claim that she has been grievously harmed as the woman whose child is ripped from her arms as she recovers from childbirth.[[7]](#footnote-8) Recognising this as a grave harm does not require us first to posit any specific parental rights over one’s offspring. Animal protection laws which dictate the minimum length of time before (for example) cows and dogs may have their offspring removed from them do not rely on claims that animals have parental rights. Rather, they are justified by (a) a more general commitment to animals’ *prima* facie rights not to be subjected to harm, and (b) a recognition of the deep distress experienced by these animals when separated from newborn offspring (recognition of this distress in the latter being a focal point for some vegan activism).

Even if we accept the above, some might dispute the assumption that forcible separation from her newborn would likewise constitute a grave harm for an adolescent mother. However, it would be highly unreasonable to recognise it as such for adult women and for female mammals such as dogs and cows, but suppose girls and adolescents to be immune from this kind of distress. If anything, we should recognise the possibility that a child will suffer greater harm than an adult woman in having her newborn forcibly removed from her, given her relatively diminished capacities for understanding, and the increased vulnerability which arises from her age and social status. We should therefore accept that forcible separation from one’s newborn constitutes a grave harm regardless the age or social position of the mother. On this basis, I propose the following argument for (restricted) gestationalism:

**P1:** To forcibly separate a mother from her newborn constitutes a grave harm.

**P2:** We have a *prima facie* right not to be subjected to grave harms.

**C1:** A mother has a *prima facie* right not to be forcibly separated from her newborn.

C1 does not entail that a mother cannot give up custody of her newborn voluntarily. It is also consistent with the belief that there are certain cases in which it is justifiable to forcibly remove a newborn from its mother. Rights are often defeasible, especially where they conflict with the rights of others. The mother’s right might be outweighed by the rights of that child – for example, where the mother does not consent to medical staff removing the newborn for urgent medical treatment.

As Preda notes, there is a distinction between positive and negative rights, and between their correlative duties (2015, p. 680). The duty that correlates with a right “has the same content as the right” in that both are satisfied by the performance of that duty (p. 679). Positive rights correlate with duties to perform certain actions; negative rights correlate with duties to abstain from an action. To determine whether a right is positive or negative, Preda argues that “we need to clarify what its correlative duty is since typical formulations are often ambiguous” (pp. 680-681ff). This point is crucial to the discussion of parental rights in this paper. The right to life “can mean a claim that others abstain from murder but it can also mean a claim that others provide us with what is necessary for survival” (p. 681). Likewise, parental rights to custody of a particular child might be positive rights, correlating with a duty on others to provide one with access to that child and enable continued custody, or they might be negative rights, correlating with an obligation on the part of others to abstain from removing or interfering with her custody of the child.

The right not to have one’s newborn child forcibly removed seems clearly to be a negative right, since a child is always born *to* a specific person and so comes into existence in someone’s custody – specifically, that of the gestational mother. The newborn is ‘with’ the mother by default, since, as Rothman puts it:

“We begin as parts of our mothers’ bodies. We don’t, as the language of patriarchy would have it, “enter the world” or “arrive.” From where? Women who give birth, I have often pointed out, don’t feel babies arrive. We feel them leave” (1996, p. 1246).

The forcible separation of mother from newborn would thus constitute an intervention which (given the *prima facie* rights of the mother as defended above) must be justified by sufficiently weighty rights of others. These might be the rights of the child not to be harmed, or they might be some third party’s positive right to custody of that child. We may consider cases described elsewhere in the literature on parental rights, in which the genetic father of a child born and adopted without his knowledge makes a claim for custody (Oren, 2006; Shanley, 1995). If this claim is underpinned by a positive right to custody, the correlative duty of others is to provide him with the child, including the adoptive parents, who presumably have a duty to give up custody. They cannot simultaneously have the duty to give up custody and the right to maintain custody; only one of these can be valid. However, the account I defend here leaves open the question of whether there *are* positive parental rights, and so whether a third party’s positive right to custody of a particular child could conflict with (and outweigh) a gestational mother’s right not to be forcibly separated from her newborn.[[8]](#footnote-9)

It might be objected at this point that it is unreasonable to posit a negative right regarding one’s relationship to, or custody of, a non-consenting party.[[9]](#footnote-10) Vallentyne, for example, argues that “A man’s profound interest in having a relationship with a given woman does not give him any rights to control access to her. The situation with children is no different” (2003, p. 1001). However, the relationship between mother and newborn is very different to that which exists between adults, or between an adult and an unrelated child. As Gheaus (2018) argues, when a newborn comes into existence it is, in most cases, already in an intimate relationship with its mother, regardless of its capacity for consent (or lack thereof). The infant recognises the voice and heartbeat of the gestational mother, “physical contact with whom regulates the baby’s hormone levels, temperature, metabolism, heartbeat, and antibody production” (2018, p. 235). In defending the rights of the mother not to be separated from her newborn without her consent, we may also reflect once more on animal welfare legislation which, in protecting both female mammals and their newborn offspring from the distress of forcible separation, presupposes neither the existence of parental rights in animals nor their capacity for consent to relationships.

Unlike other gestationalist accounts which have been put forward in recent years, this account does not defend gestation as a grounds for any parental rights beyond the *prima facie* right not to be forcibly separated from one’s newborn. However, we may ask whether this right gives rise to others, such as the right to custody. Where custody is understood as the care and control of a person, animal, or object, then the right to custody of a child seems strongly to imply the right to parent that child. There are situations in which we would reject the claim that a mother has the right to parent her newborn – in particular (as noted in section 1), the case of a young adolescent mother. If an adolescent mother has a *prima facie* right to custody of her newborn, as a result of her right not to be forcibly separated from him/her, and the right to custody is concomitant with the right to parent the child, then we seem to have a conflict. However, if the right not to be forcibly separated from one’s newborn does *not* entail a right to parent the child, we might doubt the characterisation of the former as a parental right. I address these concerns in the next section.

**4. Parental rights and the right to parent**

In this section, I argue that accepting that a 10-year-old girl has the right not to be forcibly separated from her newborn does not entail accepting that she has full parental rights (as traditionally characterised). In order to make this further step, we would have to demonstrate both (a) that parental rights are necessarily acquired concomitantly; and (b) that the right not to be forcibly separated from one’s newborn is a parental right. I will consider the distinction between parental rights and the right *to parent* a child, and argue that we may consistently recognise a child’s right not to be forcibly separated from her newborn whilst denying that she has the right to parent.

If we understand the right to parent as the right to carry out the parental work of childcare (for example, housing, nurturing, and disciplining that child, and making the decisions mentioned above) within a parent-child relationship, then it may seem that it is a right which can only be held by parents. Others, including teachers and nurses, may carry out part of the daily work of childcare, but we would not characterise them as *parenting* the child. If the right to parent a particular child is restricted to the parents of that child, then it seems reasonable to say that the right to parent is a parental right. However, some accounts of parenthood suggest that parental rights are acquired *by* carrying out this parental work – that is, by parenting. Millum, for example, argues that ‘the primary caregivers, those who have invested substantial parenting work into a child, are also the rights-holders’ (Millum, 2010, p. 118). On this account, parental work is done within ‘a particular form of caring, intimate relationship with a child’ (pp. 120–121ff.). If we accept an account of parenthood according to which parental rights over a child are acquired byparenting that child, it follows that the right *to parent* that child cannot be a parental right. If anything, the acquisition of parental rights is (on such an account) contingent on first having the right to parent.

Of course, many accounts of parenthood presuppose that parental rights are acquired as a concomitant ‘bundle’, and that they are acquired by the same means. But is it the case that one must have either *full* parental rights or *no* parental rights? And are all parental rights acquired by virtue of the same actions, relations, or characteristics? Many philosophers have argued that parental rights and *obligations* are acquired by different means – Archard, for example, criticises the ‘parental package’ view (that ‘If someone has both some parental rights and some parental responsibilities then they have all of the parental rights and all of the parental responsibilities’) on the grounds that we can explain the origins of parental obligations by appeal to facts which ‘cannot serve as a ground for parental rights’ (Archard, 2010, p. 109). Some philosophers posit a particular relationship between the two – for example, suggesting that the acquisition of parental rights is contingent on the fulfilment of parental obligations, or that an individual has parental rights only insofar as they *allow* these obligations to be fulfilled (for example Archard, 1990; Millum, 2010; Vallentyne, 2003). It is also widely accepted in this literature that parental obligations and rights have different defeasibility conditions – a neglectful parent may lose their parental rights, whilst retaining the ultimate responsibility to ensure the care of the child. However, the question of whether parental rights themselves (or indeed, parental obligations) come as an ‘all or nothing’ package has been largely overlooked. Moral philosophers have tended to focus on the acquisition and defeasibility conditions of ‘parental rights’ more broadly, often characterizing these by appeal to ‘commonsense’ or everyday understandings of the rights of parents.[[10]](#footnote-11)

I hold that the right *to parent* should not be understood as the (single) right to carry out all tasks and decisions characterised as parenting, but rather as a set of particular rights (such as the right to maintain one’s relationship with the child, to carry out childcare, and to make healthcare- and education-related decisions for the child) which usually are, but need not be, concomitant. Gheaus (2015) denies that traditional parental rights like the right to custody and authority over a child are necessarily concomitant with the right to form and continue an intimate relationship with a child. Absent the culturally specific expectation that only a small handful of people carry out all ‘parental’ tasks for a given child, it seems more reasonable to think that different parental rights can be acquired by different people, depending on their position with respect to the child and to parental labour. On this understanding, we cannot deny that those rights are parental rights on the grounds that they do not entail (all) other parental rights. Having established the adolescent mother’s right not to be forcibly separated from her newborn, and in light of the strong intuition that she does not have parental rights *in toto*, it is more reasonable to conclude that parental rights are not acquired concomitantly than to conclude that this right is not a parental right.[[11]](#footnote-12) Despite the tendency in this field of research to refer to ‘parental rights’ as a cluster (rather than singling out individual rights), there is no obvious reason to assume that these rights must be acquired together, and in the same manner.

What does this mean for the adolescent mother? If we reject the notion that parental rights are all acquired in the same way or for the same reasons, we can say that children and adolescents have someparental rights, without committing to the unintuitive claim that they have the right to parent (in the sense outlined above). As mentioned earlier, this may have implications for accounts of further parental rights – for example, the right not to be forcibly separated from one’s newborn might provide adolescent parents with a basis for other parental rights, such as the right to custody and the right to make decisions regarding one’s child’s upbringing. Whether or not that is the case, acknowledging this strong negative right has significant implications for philosophy of parenthood.

**5. Obligations to both children**

Following the above discussion, let us suppose for the moment that a 10-year-old girl has the right not to be separated from her newborn against her will, but that (beyond this) she has neither full parental rights nor parental obligations in the sense described in section 1. Both children in this scenario have rights to care and support; as a dependent herself, the mother is not in a position to provide this for her newborn, and so the newborn’s rights give rise to duties of care in some third party. Despite not having full parental rights, it the adolescent mother has a weighty *prima facie* right to stay with her newborn, since to remove the newborn (for adoption, for example) without her consent would constitute a grave harm. Any arrangement which would protect both the rights of the adolescent mother and those of her newborn would require intervention on the part of others. In this section, I address the question of whether both sets of rights can simultaneously be protected, and the question of whether the mother’s rights concerning her newborn can reasonably be characterised as negative rights if they give rise to obligations on the part of others.

To answer the first question, we may return to the intersection of children’s rights/obligations and of parental rights/obligations at which we find adolescent reproduction. A child or young adolescent who reproduces is in an ambiguous position not only with regard to her own rights and obligations to the newborn, but also with regard to parental rights and obligations with regard to *her.* Whilst most philosophers of parenthood agree that parental obligations to infants and young children are weighty and extensive – however such obligations are acquired – it is less clear what parents owe to their older children. However (whatever disputes we may have over the extent to which parents owe their children emotional support, moral education, or career opportunities) it seems reasonable to say that if parents have *any* obligation to their children, they are obliged to protect their children from grave harms. The person or persons with parental obligations to the adolescent mother, then, have an obligation to protect her from the grave harm of being forcibly separated from her newborn.[[12]](#footnote-13) One of the most straightforward ways in which this might be achieved is for those who have parental obligations regarding the adolescent mother to take custody of her newborn as well. If the same person or persons parent both the mother and the newborn, her rights may be protected without violating the rights of the newborn to safety and care. Depending on her age, the mother may be able to play a role in parenting her child.

Of course, that such an arrangement would provide a straightforward solution to the problem at hand is not to say that parental obligations to a young girl automatically give rise to parental obligations to any children she may bear. The implication that one could thus enter a regress and acquire a series of new parenting obligations to which one has not consented, is highly implausible.[[13]](#footnote-14) I have not discussed in this paper the question of who acquires parental obligations corresponding to the rights of the newborn to be cared for, but we cannot presume that they would automatically be incurred by those parentally responsible for the adolescent mother (in the way that obligations for repairs may be incurred by those responsible for a child whose behaviour causes property damage). It is not clear or intuitive that parental obligations are ‘passed back’ in this sense. The claim that those with parental obligations regarding the adolescent mother might, under some circumstances, be obliged to take custody of her newborn, does not entail that they automatically acquire parental obligations regarding the newborn. Those parentally responsible for an adolescent mother can safeguard her right not to be forcibly separated from her newborn in a variety of ways, which do not necessarily require them to take on parental obligations for the infant. For example, they might care for both children on a temporary basis until the mother is able to come to terms with the infant’s adoption or removal into foster care, thus eliminating the need for forcible separation; or they might arrange foster care for the infant in such a way as to allow frequent visits, until (depending on her age when she gives birth) the mother reaches a level of maturity and independence allowing her to parent her child.[[14]](#footnote-15) Where the adolescent could *only* be protected from grave harm if those parentally responsible for her took on parental obligations for her newborn, might we conclude that they have a duty to do so; however, it is reasonable to assume that these would be uncommon circumstances.

At this point, it is worth noting that it is far from certain that (even if allowed to reside with or visit her child whilst he or she is parented by others) the adolescent mother would have the right to parent her child by the time her circumstances allowed her to do so. After a certain period has passed, during which a third party has been caring for the infant, a new parent-child relationship exists; this may well ground different rights and obligations for all parties, even if the adolescent mother resides with her child or has frequent visits with the child’s adoptive parents/foster carers. An arrangement which safeguards the adolescent mother’s *prima facie* rights regarding forcible separation from her newborn may therefore preclude her acquiring any further parental rights. As noted in section 3, some philosophers have argued that parental rights are acquired in virtue of the development of this relationship, or by the undertaking of parental labour. Thus, if a third party takes parental obligations for the infant after its birth, it may well be that by the time the mother reaches an age and capacity to independently parent the child herself, she will not have a right to do so (or will not have a right strong enough to outweigh the child’s rights to continue being parented by those with whom he or she has established an intimate parent-child relationship).[[15]](#footnote-16) However, as long as we do not presuppose that the adolescent mother has parental rights beyond the right not to be forcibly separated from her newborn, this does not necessarily produce a conflict. Acknowledging that others may (eventually) acquire parental rights regarding the newborn therefore does not undermine the claim that the adolescent mother has rights corresponding with *prima facie* obligations on the part of those others to ensure the care of the newborn without forcibly removing it from her.

We may therefore conclude that the rights of a child or adolescent who gestates and gives birth, and who (crucially) *does not consent to be separated from her newborn,* may give rise to obligations on others – including those with parental obligations to her – to ensure her own care and custody and of her newborn in a way which protects the rights of both children. If we do not believe that parental obligations to older children extend beyond protection from grave harm, this obligation might be met by arranging for the custody of both the mother and newborn to be taken by some third party or institution, or by organising an open adoption or fostering arrangement. On the other hand, recognising more extensive parental obligations, such as the obligation to continue caring for a child with whom one has established an intimate parent-child relationship (Prusak, 2011; Weinberg, 2008), might imply that those parentally responsible for the adolescent mother are obliged to take temporary, or even permanent, custody of her offspring. The precise obligations arising for those parentally responsible for the adolescent mother thus depend on how extensive and weighty we consider parental obligations more generally.

Whether or not we recognise her as a bearer of parental rights *in toto,* the adolescent mother has rights with relation to her newborn which – insofar as she remains dependent on adults for care and support – give rise to obligations on the part of others to provide her and her newborn with care and support in a particular way. Does this undermine the characterisation of her rights regarding the child as negative rights? I discuss this in the next section.

**6. Negative rights and corresponding obligations**

Many rights ascribed to children correspond with duties on the part of others to act. The adolescent mother’s right to freedom from grave harm and the rights of her newborn demands action on the part of those others, as both are children dependent on others. It might be argued that this undermines the characterisation of the mother’s *prima facie* right not to be forcibly separated from her child as a negative right. However, there are two key reasons for characterising it so.

First, we must once more acknowledge the fact that the newborn comes into existence in relationship with its mother, and that the removal of the newborn against the mother’s will constitutes a particular kind of harm to which gestational mothers are uniquely vulnerable in the period following childbirth. Non-intervention may harm both children in other ways, but the specific harm of forcible separation can only come about through action. Therefore, if there is a duty to refrain from this action (given the more general duty to refrain from actions which cause grave harm) then this duty corresponds to a negative right.

Second: the adolescent mother’s right to care and support from those parentally responsible for her is a positive right, in that it corresponds with an obligation that they actively care and support her; however, it is not a right to a specific form of care and support. Her other rights, including negative rights to freedom from certain kinds of action or intervention, may restrict the possible ways in which her positive rights can be met (and so restrict the ways in which those responsible for her can fulfil their parental obligations). A child’s positive right to a certain level of care corresponds with obligations to act – for example, the obligation to provide the child with food – but the ways in which these obligations may be fulfilled are restricted by the child’s other rights, including the negative right not to be harmed. The obligation to provide the child with food may not be fulfilled by providing the child with food to which she is allergic. The adolescent mother’s negative rights with relation to her newborn likewise restrict the possible ways in which obligations to care for her and her infant in the period following childbirth may be fulfilled.

**7. Conclusions**

The presupposition that children and young adolescents neither have the capacity nor the right to parent their own offspring does not entail that they have no rights with regard to the offspring they produce. I have argued here that any girl or woman who gestates and gives birth has the strong *prima facie* negative right not to be forcibly separated from her newborn, on the grounds that all people have a *prima facie* right to freedom from grave harm, and that this forcible separation constitutes a grave harm. Even if we do not accept that this is a parentalright, akin to other rights commonly characterised as such, our recognition of this right has significant implications for our understanding of both children’s rights and parental obligations.

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**References**

Archard, D. (1990). Child Abuse: Parental rights and the interests of the child. *Journal of Applied Philosophy*, *7*(2), 183–194. https://doi.org/10.1111/j.1468-5930.1990.tb00266.x

Archard, D. (2010a). The Obligations and Responsibilities of Parenthood. In D. Archard & D. Benatar (Eds.), *Procreation and Parenthood: The ethics of bearing and rearing children* (pp. 103–127). Oxford University Press.

Archard, D. (2010b). The Obligations and Responsibilities of Parenthood. In D. Benatar & D. Archard (Eds.), *Procreation and Parenthood: The Ethics of Bearing and Rearing Children* (pp. 103–127). Oxford University Press.

Brake, E. (2010). Willing Parents: A Voluntarist Account of Parental Role Obligations. In D. Archard & D. Benatar (Eds.), *Procreation and Parenthood: The Ethics of Bearing and Rearing Children* (pp. 151–177). Oxford University Press.

Brighouse, H., & Swift, A. (2006). Parents’ Rights and the Value of the Family. *Ethics*, *117*(1), 80–108. https://doi.org/10.1086/508034

Cohen, H. (1980). *Equal Rights for Children*. Littlefield, Adams, and Co.

Ferdinand Schoeman. (1980). Rights of Children, Rights of Parents, and the Moral Basis of the Family. *Ethics*, *91*(1), 6–19.

Firestone, S. (1970). *The Dialectic of Sex*. William Morrow and Co.

Gheaus, A. (2012). The Right to Parent One’s Biological Baby. *Journal of Political Philosophy*, *20*(4), 432–455. https://doi.org/10.1111/j.1467-9760.2011.00402.x

Gheaus, A. (2015). Is There a Right to Parent? *Law, Ethics and Philosophy*, *3*, 193–204.

Gheaus, A. (2018). Biological Parenthood: Gestational, Not Genetic. *Australasian Journal of Philosophy*, *96*(2), 225–240. https://doi.org/10.1080/00048402.2017.1354389

Holt, J. (1975). *Escape from Childhood: The Needs and Rights of Children*. Penguin.

Millum, J. (2010). How Do We Acquire Parental Rights? *Social Theory and Practice*, *36*(1), 112.

Montague, P. (2000). The myth of parental rights. *Social Theory and Practice*, *26*(1), 47–68.

NHS Trust v JP, [2019] EWCOP 23 (High Court 18 June 2019).

Oren, L. (2006). Thwarted Fathers or Pop-Up Pops?: How to Determine When Putative Fathers Can Block the Adoption of Their Newborn Children. *Family Law Quarterly*, *40*(2,), 153–190.

Page, E. (1984). Parental rights. *Journal of Applied Philosophy*, *1*(2), 187–203.

Preda, A. (2015). Are There Any Conflicts of Rights? *Ethical Theory and Moral Practice*, *18*(4), 677–690. https://doi.org/10.1007/s10677-015-9596-2

Prusak, B. G. (2011). The Costs of Procreation. *Journal of Social Philosophy*, *42*(1), 61–75. https://doi.org/10.1111/j.1467-9833.2010.01519.x

Revel, A., Revel-Vilk, S., Aizenman, E., Porat-Katz, A., Safran, A., Ben-meir, A., Weintraub, M., Shapira, M., Achache, H., & Laufer, N. (2009). At what age can human oocytes be obtained? *Fertility and Sterility*, *92*(2), 458–463. https://doi.org/10.1016/j.fertnstert.2008.07.013

Rothman, B. K. (1996). Daddy Plants a Seed: Personhood Under Patriarchy. *Hastings L.J.*, *47*, 1241–1248.

Schapiro, T. (1999). What Is a Child? *Ethics*, *109*(4), 715–738. https://doi.org/10.1086/233943

Shanley, M. L. (1995). Unwed Fathers’ Rights, Adoption, and Sex Equality: Gender-Neutrality and the Perpetuation of Patriarchy. *Columbia Law Review*, *95*(1), 60. https://doi.org/10.2307/1123127

Vallentyne, P. (2003). Rights and Duties of Childrearing. *William & Mary Bill of Rights Journal*, *11*(3), 991–1010.

Weinberg, R. (2008). The Moral Complexity of Sperm Donation. *Bioethics*, *22*(3), 166–178. https://doi.org/10.1111/j.1467-8519.2007.00624.x

1. For example, philosophers have considered the ways in which parental obligations are shaped and determined by children’s interests, and the extent to which parental rights to make decisions about their children’s lives might be constrained by children’s rights to autonomy. [↑](#footnote-ref-2)
2. The person who comes home to find that his cat has been covered in poster paint tends to direct blame at his next-door neighbours, rather than at their two-year-old child. [↑](#footnote-ref-3)
3. The person who comes home to find that his garden wall has been vandalized tends to direct blame at his next-door neighbours’ fourteen-year-old child, but may also hold the parents morally responsible for their failure to instil certain moral values in their adolescent, and hold them financially responsible for the damage. [↑](#footnote-ref-4)
4. The youngest mother on record gave birth at the age of 5 years and 7 months (Revel et al., 2009, p. 461). [↑](#footnote-ref-5)
5. This account is therefore consistent with the possibility that there are *not* in fact parental rights over children characterised in this way, as has been argued by some theorists (see for example Archard, 1990; Vallentyne, 2003). [↑](#footnote-ref-6)
6. We should note that children may well (and frequently do) parent their own children, and indeed the children of others, even if they have no moral right or obligation to do so. [↑](#footnote-ref-7)
7. Some might consider this a needlessly fanciful attempt to play on the reader’s emotions; unfortunately, this describes an arrangement approved by the court in *NHS Trust v JP* (2019) . The arrangement ultimately was not carried out, because the woman in question came to hospital and gave birth to a healthy child, via vaginal delivery, ahead of her due date. [↑](#footnote-ref-8)
8. It is worth clarifying at this point that separation is not simply the absence of physical contact (or we could say that the mother disavowed her rights the first time she put the infant in a bassinet in order to get some sleep). For the purposes of this paper, I suggest that the two have been separated, forcibly or otherwise, if her newborn is removed without her consent or knowledge, she is denied information about its whereabouts, and/or she is kept from seeing or accessing her newborn. [↑](#footnote-ref-9)
9. Many thanks to the guest editors for raising this point. [↑](#footnote-ref-10)
10. One exception to the tendency to consider parental rights as a concomitant bundle is found in Brighouse and Swift's account (2006). Brighouse and Swift distinguish between fundamental ‘associational rights’ (parents’ rights to maintain a relationship with their children) and ‘control rights’ (for example, the right to decide whether or not to withdraw one’s child from school). The latter are, on this account, derived from the former. [↑](#footnote-ref-11)
11. That this particular right applies only during a relatively short period following the child’s birth might seem to undermine its characterisation as a parental right. However, plenty of rights generally understood as parental rights which apply only under certain circumstances or during particular points in a child’s life. For example, the right to choose one’s child’s name applies likewise only during a short period following their birth, and the right to make decisions about their education applies only when they are is school-aged. [↑](#footnote-ref-12)
12. This seems clearly to include the obligation not to be the party who forcibly separates her from her newborn. [↑](#footnote-ref-13)
13. Many thanks to an anonymous reviewer for raising this point. [↑](#footnote-ref-14)
14. The latter would still require that such a foster care arrangement be initiated only when the mother is ready to release the newborn into another’s custody; if the promise of visitation is insufficient to secure her consent, forcibly separating her from the infant would constitute a grave harm regardless of promises to allow her to see the child again. [↑](#footnote-ref-15)
15. The outcome here depends on the mother’s age when her child is born and on the way in which their care is arranged; it would be unreasonable to expect the same distribution of rights and obligations in a case where the mother gives birth at the age of 8 and is raised alongside her newborn by her parents, and in a case in which a 14-year old girl gives birth and consents to her newborn being placed with foster parents for a short period (during which she visits the child frequently) and seeks custody of her child when she leaves school at 16. [↑](#footnote-ref-16)