

The Moral Foundations of Parenthood, Joseph Millum. Oxford University Press, ix + 158 pages, 2018.

Moral Desert and Parental Rights

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1. Introduction

The project of Joseph Millum’s new book *The Moral Foundations of Parenthood* is to develop a novel theory of moral parenthood.¹ At its core, this theory includes an account of

- i*) the acquisition and content of parental rights (developed in chapters two and three);
- ii*) the acquisition and content of parental responsibilities (developed in chapters four and five); and
- iii*) parental decision-making (developed in chapter six).

On *i*): Millum’s main contribution is to advance a desert-based theory, according to which parental rights are acquired through the performance of morally deserving parental work that promotes the flourishing of a child. The content of parental rights consists in the goods that parents have made possible through the performance of appropriate parental work.

On *ii*): Millum advances a voluntarist, conventional, acts-based account of special responsibilities, according to which, roughly, parental responsibilities are acquired through social convention. The content of these special duties is determined by what children are owed to society as a matter of social justice.

On *iii*): Millum defends a new *Reasonable Subject Standard* of parental decision-making, according to which proxy decision makers should choose for a child as though she were rational and choosing for herself.

Millum’s book is accessible, well-written, and contains interesting arguments for what most readers will consider to be controversial conclusions. Though, to my mind, many of his conclusions are indeed plausible, I don’t think that Millum’s arguments are always the right ones to establish them. In what follows, I elaborate on the core claims outlined above and argue that Millum’s account of parental rights and responsibilities, in particular, has some serious shortcomings.

¹ I am grateful to Ralf Bader and Alex Voorhoeve for comments.

2. Parental Rights

Millum develops what he calls the *Investment Theory* of parental rights, according to which parental rights are acquired through the performance of morally deserving parental work (hereafter just “work”). The *Investment Theory* is based on the following desert-based principle:

Investment Principle: Ceteris paribus, the extent of an agent’s stake in an entity is proportional to the amount of appropriate work he or she has put into that entity (25).

A relevant entity is a given child for whom an agent can acquire parental rights. An agent’s stake constitutes the basis for a claim to some set of rights over a particular child. The relevant work is to be understood as appropriate and morally permissible effort that promotes the flourishing of the child (25-7).

The *Investment Theory* is an entitlement theory—it tells us how parental rights are acquired. But a full theory of parenthood also needs to provide an existence theory that tells us which parental rights exist. To this end, Millum’s main innovation is to argue that parents have *fundamental rights*—i.e., rights grounded in their interests as opposed to the ones of third parties or children—to realise the goods that they have made possible through the performance of parental work. These goods include rights against interference by others. Importantly, these rights are constrained by parental responsibilities and the rights of children (48-60).

Millum’s account is innovative and appealing in many respects. It is intuitive, presents a straightforward way to understand the principle of justice that “reward” (in the sense of decision-making rights over the child’s upbringing, etc.) should be proportional to work and captures paradigmatic cases of moral parenthood since, in most cases, biological parents *de facto* perform most parental work.

Yet some of its implications will be controversial. For example, the *Investment Theory* implies that the extensiveness of parents’ rights will vary from case to case, since their extensiveness in turn depends on the amount of parental work that parents have performed. It also implies that child can have *more* than two moral parents since the performance of parental work is not limited to biological procreators.

This latter implication, in particular, will challenge strong intuitions, but Millum’s defence of its plausibility is interesting and persuasive. Drawing on a variety of sources from outside the philosophical literature, Millum (36-8) argues that ideal of the two-parent family as the optimal child-rearing set-up is a historically recent and, to some extent, arbitrary phenomenon which is far from

universally shared across cultures. For example, within African-American communities “othermothers” share in parental responsibilities alongside “bloodmothers” and in other countries, additional parents have been given legal recognition in court rulings. Since there exist no evidence to suggest that having more than two parents is harmful for a child’s welfare, a theory of parental rights should therefore not privilege an exclusively binary parental-set up, which the *Investment Theory* does not.

By contrast, Millum’s account of parental work, specifically his remarks on what kind of work can ground parental rights, is problematic.

Millum defines work as “the amount of appropriately directed effort, where appropriateness is defined as the ratio of the effectiveness of the means taken to the most effective means the agent could have taken” (27). This rules out resultant and constitutive luck as relevant to desert since only the difference in expected value for which an agent is responsible is counted as deserving work. Consequently, Millum can, for example, capture the intuition that parents who put in a lot of effort but *de facto* do comparatively little for the flourishing of a child, due to factors beyond their control, still acquire weighty parental stakes.

But problem cases remain. The *Investment Theory* seems to imply that the work of IVF technicians, doctors, or even babysitters can lead them to acquire parental rights. More generally, without further qualification, the view would imply that any agent *A*’s contribution, however great or small, to the flourishing of a child *C* grounds a parental stake for *A* to parent *C*.¹ That must be false.

Millum (32-4) responds that implausible ascriptions of parental rights to parties that contribute to the flourishing of a child can be avoided because these parties have agreed to perform *outsourcable* work *on behalf* of the intended parents. Certain kinds of work such as feeding or clothing a child (generic goods) can be performed by proxy-parents, whereas other kinds (filial goods) such as forming an intimate relationship with a child must necessarily be performed by intended parents, otherwise their parental claims will be undermined. (Introducing this distinction is important because it would otherwise allow very lazy parents to permissibly outsource all of their parenting and nonetheless acquire parental rights in the process). Since most problem cases involve the outsourcing of generic goods, the work performed by doctors or babysitters in fact grounds claims on the intended parents.

This argument faces two difficulties.

¹ This implication is particularly problematic for Millum, since he doesn’t provide a full taxonomy of what counts as deserving parental work and relies on a very inclusive notion to rule out contingent parenting traditions (32).

First, the distinction between generic and filial goods to demarcate the kind of work that can be outsourced is not compelling. Surely many of the acts that realise generic goods—be it feeding, clothing, or looking after a child—are also partly constitutive of and intertwined with the filial good of forming an intimate emotional relationship. If this is right, then the *Investment Theory* cannot avoid the unwelcome implication that babysitters can acquire substantial parental stakes in the children of working parents, which seems implausible.

Secondly, the notion of filial goods seems underspecified in ways that cause new problems. Forming an intimate relationship with a child is presumably one important filial good that cannot be outsourced, but it's unlikely to be the only one. For example, what about parents' responsibility to educate themselves for the role as parents? If there are several forms of parental work, are they all equally weighty? Are they jointly necessary and sufficient, or individually sufficient? To illustrate the worry, suppose that someone supports their pregnant friend's pregnancy and spends a lot of time educating herself so she can be a good carer for the child. Suppose she then also puts this knowledge to good use in helping her friend take care of the child. Meanwhile, the biological mother makes no such investment in her own 'parental education' and spends no more time with her own child as the friend does. Can the friend thereby acquire a weightier parental stake than the biological parent? If so, this would also seem implausible.

Surprisingly, when re-encountering the objection about the *Investment Theory's* odd implications with respect to the appropriate parental right holders in chapter three, Millum seems to deal with the problem in a different way. This time, Millum (65-6) denies that that third parties such as babysitters or doctors can have a right to realise their minor parental stakes because it would prevent realisation of goods by people who have stronger stakes in the child. The parental stakes of less heavily invested parties are therefore outweighed by the inconvenience their claims would pose to the primary moral parents.

This argument also misses its mark. The idea that one should adjudicate the realisation of differently weighty parental stakes of different parties by appeal to the inconvenience caused to the *primary* moral parents seems problematic insofar as it presupposes that the *intended* parents have already performed significantly more work than other parties. But as the case of the child-wanting friend shows, the account still seems to have implausible implications in cases where this condition is not met and a child is still "up for grabs". Further, we might imagine scenarios involving disputes among several parties who, intuitively, all performed equally moderate amounts of parental work and press their parental stakes. In those cases, the above argument seems to have no purchase.

My diagnosis of what drives these issues is that Millum doesn't sufficiently address how and what kind of parental work adds up to parental claims that can be meaningfully compared and used to adjudicate those competing parental claims that Millum wants to preserve in his account—such as the case of heavily invested grandparents who object to their child moving away with their grandchild (66)—but which excludes other trivial and intuitively implausible claims and disputes.

3. Parental Responsibilities

A theory of moral parenthood must not only provide an account of parental rights and their acquisition, it must also specify the acquisition and content of the special duties that parents have toward their children. Millum addresses these issues in chapter four and five.

Millum assumes a voluntarist account of special responsibilities (19)—roughly, the view that people only have special responsibilities as a result of actions for which they are responsible. His argument has two steps. Step 1 is an argument by way of elimination against natural duty accounts according to which special duties are independent of social convention (82-7). Step 2 is a positive account of artificial duties, according to which special duties depend on social convention within some specified community (87-94).

Two natural duties accounts are critiqued: The *Responsibility for Needs Theory* according to which an individual I_1 has a special duty toward some other individual I_2 when and because I_1 has put I_2 in a special position of need (or vulnerability); and the *Responsibility for Neglect Account* according to which I_1 has a special duty toward I_2 when and because others expect that I_1 has a special duty toward I_2 .

The *Responsibility for Needs Theory* fails, according to Millum (83-5), because *i*) the principle that we have special duty to aid those whom we have put in need does not apply to parenthood; *ii*) it is intuitively implausible; and *iii*) it cannot adequately individuate between the intentions that give rise to special duties and the intentions that do not do so. The *Responsibility for Neglect Account* fails because *i*) it seems to imply that an agent can absolve themselves of special duties by changing the expectations of others that she will in fact discharge her special duties and *ii*) the idea that being in a *better* position than others to prevent neglect as a basis for parental responsibilities for a child's needs is intuitively implausible (85-87).

I think that the critique of these two accounts, considering the work that they perform in the overall dialectic, would have deserved more attention. For example, in addition to Millum's failure to consider ways in which the *Responsibility for Neglect Account* can cash out the relevant notion of "expectation" that

generate the special duties, his assertion that “[s]imply being *better* positioned than others to prevent neglect should not give me complete responsibility for meeting a child’s needs” (87) is unsubstantiated. It also ignores a considerable body of reductionist literature in the ethics of partiality that places great emphasis on the importance of an agent’s privileged empirical position to promote her intimates’ well-being and meet their needs (for a clear exposition of the “reductionist” distinction see Kolodny, 2010).

Having rejected two accounts of natural duties, Millum proposes a *Conventional-acts Account* of special responsibilities (88-89):

Responsibility Conditions: *P*’s action *A* constitutes taking on artificial responsibility *R* when and because:

- (1) *P* knows (or should know) that she is performing *A*;
- (2) *P* is not unduly pressured to *A*;
- (3) *A* is intentional under some description;
- (4) in *P*’s culture, *A* is understood to constitute taking on *R*; and
- (5) *P* knew (or should have known) that (4).

Again, this account has a lot going for it (89-90). It can explain how, in paradigmatic cases, the actions of biological parents do lead to the acquisition of special duties whereas the actions of midwives and obstetricians do not, and how and why parental responsibilities change as children grow up, since expectations with respect to their rearing change accordingly.

What about the content of parental responsibilities? Here Millum makes the interesting move of starting out by first considering what all children are owed by society—which, he assumes, is an equal opportunity to flourish (111)—as opposed to what parents, in particular, owe their children. Though there will be some variability on the necessary elements required for a child’s flourishing depending on the context, Millum thinks that there are certain paradigmatic goods necessary for the flourishing of a child across all contexts, namely, having a caregiver with whom the child can form the intimate emotional relationships that are necessary for their development (112). If all children are owed equal opportunities to flourish as a matter of social justice, then parental responsibilities are, at their core, a set of duties that parents adopt on society’s behalf.

Upshots of this proposal are that it can integrate parental responsibilities in a wider moral theory and, for example, explain why what children are owed by their parents overlaps with what most people think children are owed as a matter of basic entitlement (112). Moreover, it fits with an intuitive understanding of the relationship between state and family, namely that the state has a duty to find parents for children to support them, and hold them accountable if they fail to discharge their duties (113).

These advantages notwithstanding, Millum's theory of parental responsibilities also faces challenges.

First, there remains some unclarity about the notion of a convention that figures in the *Conventional-acts Account*. Millum contends that his account does not imply that gamete donors acquire parental responsibilities: "Where there is no established consensus, there is no established convention" (93). So, there are no responsibilities on part of gamete donors since there is disagreement about whether they do. But he then fails to explain more specifically what consensus and conventions amount to—he does say (92-3) that previous rulings in law which have required sperm donors to pay child support are insufficient proof of a society's accepted convention. But if not that, then what is?

Second, Millum's theory of the acquisition and content of parental responsibilities seems to sit uncomfortably with the motivating reasons that parents have for being partial to their children. Imagine a paradigmatic case of a parent, Ann, who intimately loves and cares for her daughter Beth. When discharging her parental responsibilities toward Beth, it doesn't seem that Ann will be motivated by considerations to do with her voluntarily agreement, contingent on what currently counts as convention, to fulfil a certain core set of duties to Beth on society's behalf. Rather, one might think that whenever Ann is caring for her daughter and feels required to do so, she will be motivated by virtue of the love she feels for Beth or by virtue of the particular individual, Beth, herself and see those considerations as providing her with reasons to be partial to her daughter. Millum's account therefore creates a discrepancy between how parents are motivated to be partial and what grounds their parental responsibilities.

4. Parental Decision-Making

Chapter six concludes the book by considering parental decision-making (128-53). Millum examines cases where parents have to balance their interests against those of children, when they have to consider the conflicting interests of multiple children, and when they make decisions that may be socially beneficial but not in interests of their child.

Millum (136-7) defends a *Reasonable Subject Standard* of parental decision-making, according to which proxy decision makers should choose for a child the child would do if she were rational and choosing for herself. A "rational" decision-maker is understood as taking into consideration all prudential and moral practical reasons of which she is aware. In cases where only the child's interests are at stake, the parent should do whatever is in the child's best interest; in cases where the rights and interests of other parties are relevant too, the parent should act according to whatever duties a moral agent would be subject to (136).

This view has several appealing implications (137-8). First, it explains why sometimes parents are permitted to put their interests ahead of their children's when it would be unfair to do so otherwise; for example, a parent is not morally required to sacrifice a very fulfilling job to be able to send her child to a marginally better school. Secondly, it explains why respecting the rights of parents may take precedence over promoting the best interests of a child, since a reasonable subject would have to respect claims of those with parental stakes.

Many of Millum's remarks here were persuasive to me, though I would have liked to see some more discussion on how the *Reasonable Subject Standard* can capture goods that are intrinsic to childhood. This seems problematic insofar as Millum's proposal mandating decision-making on behalf of a child as if it were a rational, competent, informed adult might miss out on capturing precisely those goods that only a child—as an imperfect rational agent limited by ignorance, inconsistent wants, and beliefs—would prefer and which are nonetheless important to their flourishing *qua* child.

In sum, *The Moral Foundations of Parenthood* is an accessible book that offers novel arguments for interesting and controversial conclusions. Millum does a great job of illustrating how his views apply to concrete issues such as surrogacy disputes (in the case of the acquisition of parental rights) or corporeal punishment (in the case of content of parental rights). While I have argued that not all of Millum's arguments are persuasive, its merits makes it a worthwhile read for specialists and non-specialists alike.

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