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How Many Parents Can a Child Have? Philosophical Reflections on the "Three Parent Case"

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"Suddenly I realized - two people isn't enough. You need backup. If there are only two people, and someone drops off the edge, then you're on your own. Two isn't a large enough number. You need three at least." -Marcus, the child of a single mother, in the film *About a Boy*¹

Introduction

This paper explores the question of how many parents a child can have in light of the creation of alternative models of family. The traditional legal answer, in Canada and the United States at least, is that a child can have at most two parents. While this answer has an obvious biological underpinning, it seems inadequate given the realities of many families. Consider the children who are the product of assisted reproductive technology. With donor sperm and eggs, surrogate mothers, and intentional parents there can be many adults involved in the birth of the child—indeed, on any reasonable notion of “biological,” a child can certainly have three biological parents, between the man whose sperm is used, the woman whose ova are used, and the woman who gestates the child. Consider the children of divorce and blended families. Consider too adopted children who may have three sets of parents: biological parents, foster parents, and adoptive parents. In light of these changes in family structures, a two-person restriction on the number of parents a child can have seems arbitrary. It seems as if we are making room for non-traditional families by trying to make them, legally speaking, resemble the traditional

model. In cases where more than two adults are in a “parent-like” relationship with the child, restricting the number of legal parents to two runs the risk of both violating the rights of an unrecognized parent or parents and going against the best interests of the child.

The case that first prompted us to think about this issue is the following: in January 2007 a ruling by Ontario's highest court allowed a young London, Ontario boy to legally have three parents, making him the only child in Canada with three legal parents. The decision struck us as sensible, given the facts, but it was surprising that this was the first and that the number of parents mattered. The Ontario Court of Appeal decided unanimously to give legal parental status to the lesbian partner of a biological mother—giving the five-year-old boy three parents. The court also ruled that the Children's Law Reform Act does not reflect current society and does not provide for the best interests of the child, who is raised by his lesbian mothers and visited by his biological father twice a week. The boy's mother and her partner have been in a stable same-sex union since 1990. In 1999, they decided to begin a family with help from a friend. Both women were to be the child's primary caregivers, but believed it would be in the child's best interests for the biological father to be involved in his life as a parent.

The mother and her partner did not apply for an adoption order for the non-biological mother because if they did so, the father would lose his status under the Child and Family Services Act, Ontario's legislation covering child protection and adoption. But denying the non-biological mother parental rights ran serious risks for the family. For example, if the birth mother died without a declaration of parentage or some other order, the surviving partner would be unable to make decisions for their minor child, including critical decisions about health care.

The appellate court ruled that the provincial legislation dealing with issues of custody, the Children's Law Reform Act, no longer reflects current society. "There is no doubt that the legislature did not foresee for the possibility of declarations of parentage for two women, but that is a product of the social conditions and medical knowledge at the time,"² they wrote. The judges said a "gap in the legislation has been revealed,"³ and the statute does not reflect the best interests of the child in this case. "The act does not deal with, nor contemplate, the disadvantages that a child born into a relationship of two mothers, two fathers or as in this case two mothers and one father might suffer."⁴ Notably however the appellate court judges did not strike down the existing legislation. Though the Court ruled that judges in Ontario have the jurisdiction to declare more than two persons to be legal parents of a child, the provincial legislation which allows only two parents stands untouched and other families who wish to recognize more than two parents would also have to undertake legal action in order to do so. The case also opens the door for other "non-traditional families" to consider seeking similar declarations. However, it will still be necessary for every such application in Ontario to be made before a family court judge—it is not possible to obtain declarations by filling out a form or applying over the counter. Judges will grant declarations of parentage only when to do so would be in the best interests of the child.

Although we began thinking about this question in light of the Three Parent Case, this is not the only case that tugs against the intuition that children come with only one or two parents. Consider the following four cases:

In May 2011 in Bellevue, Washington a baby born prematurely with many problems is now a thriving three-year-old with three legal adoptive parents.

Bellevue residents Nancy and Ed Peterson, sixty-seven and seventy-five,

and their daughter Tami Peterson, forty-four, are all Danny's legal, adoptive parents. "We know we won't live long enough to see Danny through life," said Nancy, who with Ed has worked as a foster parent for forty-three years and cared for more than a hundred children, many with special needs. "With Tami as his other parent, we can be sure of a seamless changeover."⁵

"A wife has a brief affair but soon ends it without ever telling her husband. When the couple find out they are expecting a baby, they are overjoyed. They both assume the baby is the husband's until standard blood tests taken at the baby's birth exclude the husband as a possible biological father. After counseling they are able to resolve their conflicts and remain together, welcoming the baby into their family. However, they also allow the baby's biological father and his wife to spend time with the baby, including weekly overnight visits. Upon the biological mother's return to work, the biological father's wife assumes childcare responsibilities."⁶

Aviva, a single mother and a lesbian sets out to have a child with Norbert and Rob, a gay male couple. Although their two children are the biological offspring of Robert and Aviva and the children split their time between the two households, it's Norbert, rather than Rob, who turns out to be the more involved of the two male adults in the children's lives. Parenting and decision making, writes Aviva, is shared, sometimes between Aviva and Robert but more often between the three adults who act as the children's parents.⁷

A lesbian couple have a child conceived with sperm from a sperm donor. Later the two women split and while the child is still a toddler each meets another woman and form long-term committed relationships. Their child, now a teen, moves between both households and describes himself as having four mothers. He jokes that people have a hard enough time understanding how he could have two mothers; four is beyond comprehension.

How many parents are there in these cases? And what determines claims of parentage? Wald writes that four factors have given rise to the parentage puzzle: (1) the number of children in foster and kinship care; (2) the rapid changes in medical technology whereby egg donors, sperm donors, in vitro fertilization, and surrogacy are becoming commonplace; (3) the rise in divorce rates and the accompanying rise in stepparent and “blended” families; and (4) the increasing numbers of single people and same-sex couples choosing to become parents through assisted reproduction or adoption.⁸

In this paper, we will focus on the “number of parents” puzzle as it relates primarily to families formed around same sex couples. That said, obviously the number of parents question has wide ranging implications that go beyond same sex couples. Consider the number of children in long-term foster care, unavailable for adoption because adoption isn’t possible until their biological parents waive all parental rights or the courts successfully take those rights away.

We are interested in both legal and moral ascriptions of parenthood although our focus here is on parenthood primarily as a moral notion. We’re also assuming that when we talk about parental rights we are talking about the full package of them. Another legal approach to parental rights has been to disaggregate and redistribute parental rights so

that two complete bundles of right are shared over more people. This approach is favoured by Melanie Jacobs, who suggests that “disaggregating and redefining parentage may allow for recognition of all the relevant adults in a child's life, yet not grant equal parental rights to all individuals.”⁹ This system would involve assigning “relative rights, depending upon the adult's relationship with and contributions to the child,”¹⁰ such that the rights and responsibilities normally clustered upon a maximum of two people might be dispersed among three or more people. While we find this more appealing than the current system, it still seems that the number two is arbitrary.

Still, there are many different theories about what makes someone a parent.¹¹ Wald notes that courts have relied on four categories which might be thought to ground claims of parenthood: genetics, procreative intent, the marital presumption and parental conduct.¹² How do these factors relate to the question of the number of parents a child can have?

On a genetic account, a child does have two parents but it's hard to see how the genetic tie would either be necessary or sufficient, on its own, for establishing parental rights. In these days of sperm and egg donors, and the prevalence of adoption, it seems clear that we have moved away from the idea that a child must be genetically related to his/her parents or that the genetic tie is sufficient to establish parental rights. What about parental conduct? On an account which places the foundation of parental rights on the work that parents do as parents, it is difficult to see a necessary restriction on the number of parties involved. While it's true that only the gestational mother does the work of carrying the baby in pregnancy and of giving birth, this is hardly the only act which constitutes the work of parenthood. Indeed, if that were the work that mattered morally, fathers would not have parental rights. Likewise, parental intent places no limit on the

number of persons involved. While the usual number of people who plan to have a child together will be two, there is no reason to think that more than two might not be involved.

As Wald notes, “in the 'traditional' family model, all of these factors lead to the same conclusion: that the husband and wife are the parents of the child. In other words, in such a family, the genetic parents have intentionally conceived their children within the context of their marriage and will be acting in the role of parents with regard to those children.”¹³ But these factors may not always point to the same people. Once we disentangle the various factors that ground claims of parenthood, the issue arises that more than two people fit our expanded definitions. Again quoting Wald: “When we look to intent and conduct—instead of only biology or marriage—to create legal parent-child relationships, it quickly becomes clear that there may be more than two people who are candidates for the legal title 'parent.’”¹⁴

Wald argues that while courts have expanded their definitions of “parent” to include more people and encompass adults parenting in less traditional families—including same-sex families and families created with the use of assisted reproductive technologies—they have maintained the rigid idea that a child can have only two legal parents. Thus, even when courts find that three or more adults have standing to seek parentage, the outcome of such cases still tends to protect the child’s relationship with only two of those adults.

In this paper we don't advocate any particular philosophical account of parental rights. We do note that the genetic account seems false to fact—adoptive parents are parents, after all—and only that account yields the result that the number of parents a child can have must be two. Just what gives a parent parental rights and the moral status of parent is a difficult philosophical question and we haven't set out to address it here. We

only note that none of the proposed theories yields a definitive answer to our question—how many parents can a child have?—and so we set out to address our question while remaining neutral about the philosophical questions at stake.

If children’s best interests and the rights of parents speak in favour of changing the restriction on the number of parents a child can have, what are the arguments against? In this paper we consider two main lines of argument against expanding the number of parents beyond two. We also consider how we might balance the best interests of children against the rights of parents. Finally, we argue that we need to widen the focus of philosophical discussion of the family beyond parents and children. Other adults play important, though non-parental, roles in the lives of children.

Arguments against Moving Beyond the Two Parent Model

1. The traditional family defense:

In the course of the Three Parent Case the Alliance for Marriage and Family (AMF) filed a factum saying its member groups have a “common cause” to protect the “traditional family unit in Canadian society and law.”¹⁵ The AMF, composed of the Catholic Civil Rights League (CCRL), REAL Women of Canada, the Evangelical Fellowship (EFC), Focus on the Family, and the Christian Legal Fellowship, opposed the change on the basis that the law has always recognized two parents for a child. “This is effectively providing an impetus for affirmation of multiple or group parenting rights,” argued Catholic Civil Rights League president Phil Horgan.¹⁶ The worry is that the expansion of the number of parents beyond two fundamentally changes our

understanding of family. The factum argued that the traditional family across cultures has always been a mother, a father and their children.

The group also argued that not only does the notion of three parents undermine the traditional notion of a mother and a father, but also it will open up a “Pandora’s box of complications.”¹⁷ For example, if a divorced father remarries, the new stepmother could apply to also be declared a new mother. If a woman remarries, her new husband could become a new father. Thus, a child could come to have four parents instead of his original two. The judge who heard the original application and rejected the three parent application also pointed out the difficulties the change might pose to the welfare of other children. “If a child can have three parents, why not four or six or a dozen?” he wrote. “What about all the adults in a commune or a religious organization or sect? Quite apart from social policy implications, the potential to create or exacerbate custody and access litigation should not be ignored.”¹⁸

The factum cites the case as one of the consequences of redefining marriage to include same-sex marriage which occurred in Canada in 2005. The redefinition of marriage has already involved the changing of many statutes in federal and provincial legislation, replacing the words “mother” and “father” with terms like “legal parent.” McGill professor Douglas Farrow, co-editor of *Divorcing Marriage: Unveiling the Dangers in Canada’s New Social Experiment*,¹⁹ argues that these changes represent an intrusion of state power into the biological family that has totalitarian implications. He has said the state used to recognize the family as a pre-existing institution and children’s rights to their parents and parents rights to their children are in jeopardy. McGill ethicist Margaret Somerville has warned that same-sex marriage jeopardizes children’s rights to be raised by and to know their biological parents.²⁰

There are a few responses to the traditional family argument. First, it's not clear at all that the "two biological parents and their offspring" model is a shared, cross-cultural understanding of family. Many traditional families include grandparents and resident in-laws as part of the family unit. Still other traditional families include unwed siblings as resident aunts and uncles who share household responsibilities including child care. Furthermore, the polygamous family is traditional in many cultures and in some polygamous families the wives co-mother all of the children collectively. Even among contemporary Christians who take themselves to be defending the traditional family, there are high rates of divorce and remarriage. So, it's not clear that we have the traditional, two parent plus children family on one side, and the other non-traditional, multi-parent family on the other. Some traditional families will have more than two parents, some families based on the relationship of a same sex couple may be "two parents plus children" families. What is more, even if the "two parents plus children" model of the family were the only traditional one in all human cultures, this would not constitute an argument to the effect that this ought always to be the only model. We take this to be precisely the kind of view which Humean objections to deriving an "ought" from an "is" are meant to defeat. That something has always been the case is no reason on its own to think that it ought always to be the case, or that things might not be better otherwise.

Second, even if the courts do allow multiple parents, it's not the case that all of the complications listed in the factum will follow. As noted in the article cited above, Peter Lauwers, a constitutional lawyer and a Catholic, does not share the same concerns as the Alliance for Marriage and Family about the three parents case because the courts will consider the best interests of the child and "context is everything...It is very difficult

to argue that it's bad for the child to have three adults rather than two legally responsible for his or her interests," Lauwers said. He adds, "Security is one of the primary best interests of the child. The legal relationship enhances that security. It would take a lot of evidence to overcome that sense of things."²¹ But it needn't follow from three or four parent cases that the courts will allow communes, or villages, to co-parent children if the best interests standard is still applied.

Third, in some sense the battle for the retention of the "two parents plus children" model has been lost with the extension of marriage rights to same sex couples. While some gay and lesbian leaders and advocates may have used arguments about access to traditional family structures, many others—both social conservatives and queer liberationists—argued that extending marriage rights to same sex families will change the structure of the family. The most obvious example is in families headed by two adults of the same sex but this is not the only change. The sense of chosen queer family is associated at its best with sense of creativity, a benefit suggested and explored by Alison Young.²² What sorts of family structures work to make sense of our lives and support our relationships? This may be not be the "two parents plus children" model of the family.

Fourth, Somerville's worry that same sex couples will be raising children who do not have relationships with their biological parents actually counts in favour of multiple parent recognition. Most of the multiple parent families are like the Three Parent Case in which the family includes the biological father of the child as a parent. In setting out to create families in which the number of parents exceeds two, most same sex couples are seeking to include the biological parents. As Wald points out, some families set out to explicitly create multiple parent groupings. She writes of the families she see in her legal practice,

“In some of the same-sex cases that come through my law practice, lesbian couples are choosing to use friends as sperm donors expressly for the purpose of making sure their children have a bonded, loving relationship with their biological father. Likewise gay male couples are choosing to use friends as surrogates *for the purpose of* making sure their children have a bonded, loving relationship with their biological mother. In some of these cases, the intent of the child-seeking couple is that they be sole legal parents with an amicable relationship with the other biological parent. But in others, it is the intent of all parties that the children have a genuine parent-child relationship with all three adults involved in their conception: the biological mother, the biological father, and the partner of the one who will be primary parent. Clearly, there could be four functional parents under this model, if both the biological mother and the biological father are in committed relationships, and all four intend to be parents. This highly intentional, procreative conduct by more than two adults cannot be taken lightly as we review and redefine the term 'parent' to comport more closely with modern realities.”²³

In light of this, it can be dangerous to generalize about gay and lesbian families. Some do very much resemble to the “two parent plus children” model and we don’t want to write in a way that suggests that all gay and lesbian parents want something different than the standard model. Nor do we want to assume that all multi-parent families are based on a gay or lesbian couple at the center. Heterosexual polyamorous unions which include children and shared parenting are also examples of multiparent families.

Caveats about the dangers of generalizing about queer family values aside, there is something intentional about gay and lesbian parenting that seems to require a

thoughtful discussion about who to involve in the parenting process. As Marcie and Erin, lesbian parents, write,

“In lesbian relationships, pregnancy requires conversation, staging, and other people beyond a parental couple. It breaks apart the notion that the nuclear family can ever exist, has ever existed, without a wider community. We weren’t trying to replicate this false model, to pretend that if we bought sperm from an anonymous source we could be ‘just like them—but two women.’ With no pretense that this would be a child made purely of discrete intimacy, we wanted this queer kid to start from queer beginnings, recognizing and telling the story of everyone involved, without the commoditization of human tissue. No closets, no secrets, no pretend, no shame.”²⁴

2. The “goods of parenting” argument

If the “traditional family” argument fails, we may have to move on to allow more than two parents. However, before we open the door to a wider, more diverse range of family forms we ought also to consider the parental perspective. Harry Brighouse and Adam Swift argue that there are important goods of parenting that can only be achieved in something like the traditional family.²⁵ Brighouse and Swift are arguing for significant scope for parental autonomy because the decision-making rights that parents enjoy are necessary to achieve the goods of parenting.²⁶ The goods that parents achieve through parenting are essential to Brighouse and Swift’s account of parental rights. They argue that parental rights allow parents to pursue their own interests at some cost to the child’s interests but also that “there are things that it is permissible for them to do to, for, and

with their children that it is not permissible for anyone else to do; this exclusive situation is justified not merely by reference to the interests of the children but by reference to the interests of the parents themselves.”²⁷

Offering a parent-centred account of the grounding of parental rights, Brighthouse and Swift argue that the interest parents have in taking on a parenting role explains why the relationship must be of a certain sort. Write Brighthouse and Swift:

“The role enables them to exercise and develop capacities the development and exercise of which are, for many (though not, certainly, for all), crucial to their living fully flourishing lives. Through exercising these capacities in the specific context of the intimately loving parent-child relationship, a parent comes to learn more about herself, she comes to develop as a person, and she derives satisfactions that otherwise would be unavailable. The successful exercise of this role contributes to, and its unsuccessful exercise detracts from, the success of her own life as a whole.”²⁸

The parent-child relationship requires intimacy and it’s this intimacy that grounds a protected sphere for parents and children. Again, quoting Brighthouse and Swift:

“The intimacy one can have with one’s children is quite different from the intimacy one can have with other adults. It makes a contribution to one’s flourishing of a different kind and, for many, is not substitutable by relationships of other kinds. The challenge of parenting is something adults have an interest in facing, and it is that interest that grounds fundamental parental rights over their children.”²⁹

This approach to parenting requires a “parentlike bond,”³⁰ and will rule out certain ways of raising children. For example, Brighthouse and Swift argue against well-run state orphanages on these grounds:

"Even if a state successfully used orphanages to foster diversity and fulfill children's needs excellently, there would be a serious loss of value and flourishing. Many adults would be unable to engage in activities and relationships that make an ineliminable and great contribution to their ability to flourish. They could not get access to the full package of these activities and relationships by becoming 'teachers' at the orphanages, because, in the role of teacher, they could not enjoy the relevant kind of intimacy with, or exercise the relevant kind of legitimate partiality with respect to, a small number of particular children. Such a society would be unacceptably diminished even if children were well 'reared.'"³¹

There are different questions one could raise here about the Brighthouse and Swift account. One might worry how strong the parent-centered considerations really are. Alternately one might wonder whether they are right about in what the goods of parenting consist; as they admit, “many parents in many cultures at many points in history have not valued their children, or their relationships with them, in the ways suggested.”³² One might also worry whether these goods can only be attained in the parent-child relationship as they describe it.

We want to raise four different sorts of concerns: the first relating to the interests of children, the second relating to intimacy, the third relating to balancing parents’ and children’s interests, and the fourth relating to the interests of adults outside the parent-child relationship.

First, it seems clear that children have interests in maintaining relationships with, to use Wald's phrase, "as many adults as have meaningfully contributed to parenting a child."³³ What matters to children are strong ties with trusted adults. Some literature suggests that an exposure to a diversity of personalities and styles of parenting benefits children, and even Brighthouse and Swift hold that "children can prosper through attachments to more than one adult."³⁴ But since some of those relationships need to be of the close, intimate sort, this will impose a limit on the number of adults involved in a decision-making or day-to-day caregiver capacity in a child's life.

Will this lead to a proliferation of parents? The answer seems to be no as long as courts are considering the best interests of children involved. While it may be in a child's best interest to have three or four parents, it seems highly unlikely that it would be in a child's best interest to have eight or ten parents. As Wald concludes,

"...using the basic factors of genetics, procreative intent, parental conduct, and marital presumptions as guides, it is worth looking at whether limiting children to only two legal parents in every circumstance is in their best interests.

Recognition of more than two legal parents should be limited to cases where the specific facts support this result so as to avoid unnecessarily exposing children to the risk of overly complex custody disputes. But where the facts support a finding that there are three (or more) functional parents, all of whom the child has formed a substantial parent-child attachment such that the child could be detrimentally impacted by loss of that adult from their lives, the courts should be open to considering this option."³⁵

Second, the goods of parenting argument rules out group orphanages but it is far from clear to us that it would rule out families with three or four parents. It seems that

one could accept Brighthouse and Swift's account of the goods of parenting and the need for intimacy and still think that intimacy could be achieved in a multi-parent household. Indeed, Brighthouse and Swift emphasize that they "do not claim...that there must be two parents"³⁶ for this kind of intimacy to be achieved, and though they may be thinking of single rather than multi-parent homes, nothing in their account would suggest there is something special about the number two at all. Just as some people seek to maintain multi-partner relationships, some people might prefer to parent as part of a larger group. There is nothing to necessarily privilege the two-person relationships over other relationship forms. Likewise, the multi-parenting model might suit some people more than others. After all, if we were truly seeking to maximize parental intimacy we might favour single parent, single child relationships above all. Indeed, when it comes to difficult parenting decisions which result in long, drawn out arguments between couples, one could imagine it being useful to have a third parent to ensure against ties.

Third, suppose that children would benefit from multiple parents but that in a particular case some subset of the would-be parents wanted a more exclusive family group. We then need to balance the interests of the child against the interests of the parents. Addressing this question, Wald writes,

"The issue of how best to protect the autonomy of fit parents, while also protecting children raised in non-traditional families from 'parentectomies' when their sole legal parent decides unilaterally to terminate their relationship with another parent, is complex, and there are no easy answers. However, it is clear that children need the courts to take a more functional approach to defining the parent-child relationship, so as to protect children from losing

parents solely because the children were born into families the legislatures may not have previously envisioned.”³⁷

Finally, in thinking about the goods of parenting we might want to think more broadly about the goods that relationships with children can bring to all of our lives. That is, we might also want to consider the interests that adults who do not become parents have in the lives of children. Not all childless adults are childless by choice and as economic and environmental factors push us to smaller families, it may be that children, and relationships with them, are goods best shared when that is a viable alternative. What is more, while Brighthouse and Swift focus on the positive aspects of parenting, they clarify that parents “have an interest not simply in raising children, nor even in raising them well...but also in having the time and energy to enjoy the familial relationship goods made possible by their being parents.”³⁸ Because there is also considerable burn out and stress associated with parenting in a nuclear family, multi-parent arrangements may benefit parents as well.³⁹

Children's Relationships with Non-Parent Adults: Further Thoughts

In thinking about how many parents a child should have, it’s important to remember that what we are talking about is allowing the number of parents given legal status to correspond to the number of parents who fulfill one or more of the factors associated with parenting. We are talking about allowing, not requiring, the registration of multiple parents when all parties concerned consent.

Furthermore, we need to consider that not all alternative families want the additional parties who form their family unit counted as parents. Philosophers need to

consider the ethical dimensions of other family relationships as well and the role of aunts, uncles, grandparents, family friends and so on in the lives of children. Brighthouse and Swift also recognize the importance of these relationships, writing: “What about the interest in caring relationships—relationships that involve at least some of the elements that are central to our account of parental interests—of grandparents, uncles and aunts, and neighbors or family friends? What about children’s interests in intimate relationships with people other than their parents?”⁴⁰

There is also a far more radical suggestion that breaks the notion of “parent” off from loving, romantic relationships altogether. If children require stability, it’s not at all clear that marriage (as we as a society practice it) meets this need at all. Why do we place the care of children under the very fragile bond of romantic-erotic love? One might argue that families formed around the care of children, committed to providing and nurturing them, might be more stable than modern day marriage.

This leads back to the previously mentioned need to be more creative in our recognition of a diversity of family roles. We end with the following as an example of how such creativity can benefit not only children but particularly adults in a child's life, including but hardly limited to the multiple parents a child might have.

Jake is the partner of Torsten, the biological father of Eli, child of Erin and Marcie. The extended family includes also Torsten’s ex, Andrea, his partner at the time Eli was conceived. This collection of loving adults considers themselves family, and they play an aunt/uncle role in the lives of the children. Jake concludes as follows:

“It seems to me that families grow spontaneously around children. I never intended for Erin and Marcie to be such important parts of me, or for Andrea and her lovers to be family. I certainly never intended to be eyeing the

'Someone who loves me very much goes to U of T' socks at school with such intent. We draw lines between 'family' and 'friend,' based on blood or marriage, and as a result can consider ourselves closer to people we see every few years than to people we see once a week. But now people I barely knew well enough to call friends, people I still only see a few times a year—like Eli's back-up guardians and uncles, Bear and J—are without question part of my family. With Eli at the centre, those connections just appeared, and now I can't imagine life without them."⁴¹

- 1 *About a Boy*, DVD, directed by Chris Weitz and Paul Weitz (2002; Universal City, CA: MCA, 2004).
- 2 *A.A. v. B.B.*, [2007] 2 ONCA para. 38.
- 3 *A.A. v. B.B.*, [2007] 2 ONCA para. 38.
- 4 *A.A. v. B.B.*, [2007] 2 ONCA para. 21.
- 5 Leslee Jaquette, "Adopted 'Survivor' Thriving With Three Parents," *Bellevue Komo*, May 21, 2011. <http://bellevue.komonews.com/news/community-spirit/adopted-survivor-thriving-three-parents/642587>
- 6 Deborah H. Wald, "The Parentage Puzzle: The Interplay Between Genetics, Procreative Intent, and Parental Conduct in Determining Legal Parentage," *American University Journal of Gender, Social Policy & the Law* 15 (2007): 379.
- 7 Aviva Rubin, "My Co-World and Welcome to It: Adventures in Non-Conjugal Parenting," in *Who's Your Daddy?*, ed. Rachel Epstein (Toronto: Sumach Press, 2009), pp. 117-123.
- 8 Wald, "The Parentage Puzzle," 380-381.
- 9 Melanie B. Jacobs, "Why Just Two? Disaggregating Traditional Parental Rights and Responsibilities to Recognize Multiple Parents," *Journal of Law & Family Studies* 9 (2007): 313.
- 10 Jacobs, "Why Just Two?," 313.
- 11 For an excellent account of competing theories of the grounding of parental rights, see Elizabeth Brake and Joseph Millum's entry on Parenthood in the Stanford Encyclopedia of Philosophy: "Parenthood and Procreation," first published January 26, 2012, <http://plato.stanford.edu/entries/parenthood>.
- 12 Wald, "The Parentage Puzzle," 381.
- 13 Wald, "The Parentage Puzzle," 381.
- 14 Wald, "The Parentage Puzzle," 381.
- 15 Deborah Gyapong, "Alliance Seeks to Protect Family as '3-Parents Case' Seen as Impacting Definition of Marriage," *Canadian Catholic News*, August 30, 2006. http://www.catholic.org/international/international_story.php?id=21067
- 16 Gyapong, "Alliance."
- 17 Gyapong, "Alliance."
- 18 *A.A. v. B.B.*, [2003] 2139 ON SC para. 41.
- 19 See Daniel Cere and Douglas Farrow, eds., *Divorcing Marriage: Unveiling the Dangers in Canada's New Social Experiment* (Montreal: McGill-Queen's University Press, 2004).
- 20 See, for example, Margaret Somerville, "What About the Children?," in *Divorcing Marriage: Unveiling the Dangers in Canada's New Social Experiment*, eds. Daniel Cere and Douglas Farrow (Montreal: McGill-Queen's University Press, 2004), 63-78.
- 21 Gyapong, "Alliance."
- 22 Alison Harvison Young, "Reconceiving the Family: Challenging the Paradigm of the Exclusive Family," *American University Journal of Gender & the Law* 6 (1998): 505-555.
- 23 Wald, "The Parentage Puzzle," 398-399; emphasis in original.
- 24 Torsten Bernhardt et al., "The Spawn, the Spawnlet, and the Birth of a Queer Family," in *And Baby Makes More*, eds. Susan Goldberg and Chloë Brushwood Rose (London, ON: Insomniac Press, 2009), .

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- 25 I say “something like” as nothing in the Brighouse-Swift argument rules out parenting by same sex couples. See Harry Brighouse and Adam Swift, “Social Justice and the Family,” in *Social Justice and Public Policy*, eds. Gary Craig, Tania Burchardt and David Gordon (Bristol: The Policy Press, 2008), 139-156.
- 26 See Harry Brighouse and Adam Swift, “Legitimate Parental Partiality,” *Philosophy and Public Affairs* 37 (2009): 43-80.
- 27 Harry Brighouse and Adam Swift, “Parents' Rights and the Value of the Family,” *Ethics* 117 (2006): 81.
- 28 Brighouse and Swift, “Parents' Rights,” 95.
- 29 Brighouse and Swift, “Parents' Rights,” 96.
- 30 Brighouse and Swift, “Legitimate Parental Partiality,” 54.
- 31 Brighouse and Swift, “Parents' Rights,” 97.
- 32 Brighouse and Swift, “Legitimate Parental Partiality,” 55.
- 33 Wald, “The Parentage Puzzle,” 382.
- 34 Brighouse and Swift, “Social Justice,” 150.
- 35 Wald, “The Parentage Puzzle,” 411.
- 36 Brighouse and Swift, “Social Justice,” 142.
- 37 Wald, “The Parentage Puzzle,” 398.
- 38 Brighouse and Swift, “Social Justice,” 148.
- 39 I also suspect I’m more of a liberal than Brighouse and Swift about the parenting choices people make. They want to say that parents who choose to be less involved in the lives of their children are missing out on some of the goods of parenting. In cases where people need to leave the raising of the children to others, out of economic necessity for example, that might be right. But in cases where people choose a more distributed, less intimate version of the parent-child relationship, I’m not sure this is so. In any case, this is a point for discussion.
- 40 Brighouse and Swift, “Parents' Rights,” 100.
- 41 Bernhardt et al., “The Spawn,” 123-124.

Selected Bibliography – Works Cited

- A.A. v. B.B.* 2003: 2139 ON SC.
- A.A. v. B.B.* 2007: 2 ONCA.
- About a Boy*. DVD. Directed by Chris Weitz and Paul Weitz. 2002; Universal City, CA: MCA, 2004.
- Bernhardt, Torsten, Marcie Gibson, Erin Sandilands, Jake Szamosi and Andrea Zanin. “The Spawn, the Spawnlet, and the Birth of a Queer Family.” In *And Baby Makes More*, edited by Susan Goldberg and Chloë Brushwood Rose, 107-126. London, ON: Insomniac Press, 2009.
- Brighouse, Harry and Adam Swift. “Legitimate Parental Partiality.” *Philosophy and Public Affairs* 37 (2009): 43-80.
- . “Parents' Rights and the Value of the Family.” *Ethics* 117 (2006): 80-108.
- . “Social Justice and the Family.” In *Social Justice and Public Policy*, edited by Gary Craig, Tania Burchardt and David Gordon, 139-156. Bristol: The Policy Press, 2008.

- Cere, Daniel and Douglas Farrow, eds. *Divorcing Marriage: Unveiling the Dangers in Canada's New Social Experiment*. Montreal: McGill-Queen's University Press, 2004.
- Gyapong, Deborah. "Alliance Seeks to Protect Family as '3-Parents Case' Seen as Impacting Definition of Marriage." *Canadian Catholic News*, August 30, 2006. http://www.catholic.org/international/international_story.php?id=21067
- Jacobs, Melanie B. "Why Just Two? Disaggregating Traditional Parental Rights and Responsibilities to Recognize Multiple Parents." *Journal of Law & Family Studies* 9 (2007): 309-339.
- Jaquette, Leslee. "Adopted 'Survivor' Thriving With Three Parents." *Bellevue Komo*, May 21, 2011. <http://bellevue.komonews.com/news/community-spirit/adopted-survivor-thriving-three-parents/642587>
- Rubin, Aviva. "My Co-World and Welcome to It: Adventures in Non-Conjugal Parenting." In *Who's Your Daddy?*, edited by Rachel Epstein, 117-123. Toronto: Sumach Press, 2009.
- Somerville, Margaret. "What About the Children?" In *Divorcing Marriage: Unveiling the Dangers in Canada's New Social Experiment*, edited by Daniel Cere and Douglas Farrow, 63-78. Montreal: McGill-Queen's University Press, 2004.
- Stanford Encyclopedia of Philosophy. "Parenthood and Procreation." First published January 26, 2012. <http://plato.stanford.edu/entries/parenthood>.
- Wald, Deborah H. "The Parentage Puzzle: The Interplay Between Genetics, Procreative Intent, and Parental Conduct in Determining Legal Parentage." *American University Journal of Gender, Social Policy & the Law* 15 (2007): 379-411.
- Young, Alison Harvison. "Reconceiving the Family: Challenging the Paradigm of the Exclusive Family." *American University Journal of Gender & the Law* 6 (1998): 505-555.