

# **In it together? An Exploration of the Moral Duties of Co-Parents**

*Daniela Cutas and Sabine Hohl*

## **Institutional affiliations and e-mails**

Daniela Cutas, Medical Ethics, Lund University / Historical, Philosophical, and Religious Studies, Umeå University, [daniela.cutas@med.lu.se](mailto:daniela.cutas@med.lu.se)

Sabine Hohl, Philosophy, University of Bern, [sabine.hohl@philo.unibe.ch](mailto:sabine.hohl@philo.unibe.ch)

## **Abstract**

Even though co-parenthood is one of the most significant close personal relationships that people can have, there is relatively little philosophical work on the moral duties that co-parents owe each other. This may be due to the increasingly questionable assumption, still common in our societies, that co-parenthood arises naturally from marriage or romantic coupledness, and thus that commitment to a co-parent evolves from a commitment to a marital or romantic partner. In this article, we argue that co-parenthood should be seen as a relationship in its own right, which generates specific moral duties. Co-parents should come to explicit agreements with each other regarding the most important areas of potential conflict between them. Such agreements may have to be re-negotiated over time. We explore some possible non-negotiable co-parental duties such as the duties not to alienate the child from the other parent(s), and not to trap a co-parent in a particularly vulnerable situation. We consider some legal and societal implications of our argument and, finally, suggest some pragmatic benefits of our proposal.

## **1. Introduction**

In the dystopic comedy “Idiocracy”, released in 2006, the world is taken over by particularly unintelligent people making disastrously bad choices. The film opens with an illustration of how this came to be. Intelligent and well-educated people were too careful about the best time to become parents, given the significant responsibilities that this entails. People with low IQ were not so careful. The result, in the movie, is that the latter, but not the former, reproduce. By the time intelligent, educated people, decide they are ready for parenthood, they struggle with age-related infertility, blame games, and ultimately they die out, childless.

Leaving aside the host of problematic attitudes that contribute to the comedic effect of this introduction to the dystopia depicted in the film, we note the accusing finger pointed at prospective parents’ wasting time *thinking* about parenthood. We also come across this attitude

when women are criticised for being too ambitious professionally or picky romantically, and not having children when they are young.<sup>1</sup>

When a couple is married, the encouragement to explicitly consider the duties that are entailed by (co-)parenting is uncommon – except in the case of adoption. One reason for this is the common assumption – and expectation – that co-parenthood arises *naturally*, early on, from marriage. However, this assumption is both empirically outdated and philosophically dubious. The need to think about co-parenthood separately from marriage and romantic relationships between adults has recently been discussed by a number of authors in the philosophical literature. While these authors take important steps to ‘decouple’ the two kinds of relationships between adults, and bring up the possibility of a separate legal framework for parenthood, the issue of what *moral* duties parenting entails *between parents* has received little attention so far.<sup>2</sup> Although the basis and extent of moral duties of parents *to their children* have been widely discussed, we still largely lack a normative framework for the co-parenting relationship as such: what do co-parents owe each other in virtue of their status as co-parents?

Such a framework would be helpful to couples who plan to parent together as well as to separated couples having to redefine and reorganise their relationship as co-parents. It would also be helpful to people who may experiment with unconventional family forms, such as friends or siblings raising children together or queer couples or groups who may diverge from the two-parent model. This paper aims to open this discussion by making the case for an explicit acknowledgment of the co-parenting relationship and by exploring some of the basic moral duties that it gives rise to. If co-parenthood is a moral relationship in its own right, then it should be moved more firmly into the realm of choice and deliberation, in contrast to the folk wisdom of not ‘overthinking’ it or to the legal precedence of marriage in the recognition and protection of co-parenthood that is common throughout Europe and beyond.

We start out with a section on the reasons why we believe co-parenting should be considered a moral relationship independent of marriage and romantic couple-hood. Next, we argue that explicitly acknowledging it as such, on its own terms, will have morally desirable implications for both children and parents. We suggest that co-parents, whether they share a romantic bond or not, are under a moral duty to come to explicit agreements regarding their common project of parenting, tackling issues like the division of responsibilities among them and plans for possible changes in circumstances, such as separation or relocation. Then we turn to the question of whether there are baseline moral duties between co-parents that cannot be negotiated away. We argue that a co-parent should be guided by respect for the other co-parent’s

autonomy, as well as by a desire to avoid trapping them in a position more vulnerable than required by the parental project itself: after all, they are ‘in this together’.

In this article, we are concerned with the moral duties of co-parents, rather than with the question of how one becomes a (co-)parent – and thus how these duties are acquired in the first place. We do not take a stand on how the (co-)parenthood status arises. A child’s parents share the primary responsibility and authority to care for the child and make any important decisions on the child’s behalf. We assume that co-parenthood can happen in different configurations, including some in which there is no genetic link between the parents and the children they are raising together, or in which there are more than two co-parents.

We also remain agnostic on the question of whether marriage is a morally desirable and politically defensible institution. Co-parents may be married or unmarried, romantically involved, friends, co-habitants or linked through no other relationship than their co-parenthood. In practice, parenting roles have a heavily gendered history that still exerts strong effects in today’s Western societies. While we are well aware of this social fact, we do not speak of ‘mothers’ and ‘fathers’ in our analysis of co-parental duties, for two reasons. First, in some co-parenting constellations there may not be a mother and a father, and second, there seems to be no reason to suppose that duties among co-parents should be gender-specific (though, in practice, they may be in many families).

Lastly, we should note that not all close relationships with a child must fall under the parenthood umbrella. Some adults may be significantly involved in a child’s life without assuming the role of a parent. Adults other than their parents could have distinct duties towards children.<sup>3</sup> Other society members may owe duties towards those who are parents. Although some similar consideration may apply to, for example, the relationship between parents and other adults who play significant roles in a child’s life as to those between co-parents, we do not pursue this question here.

## **2. Marriage and Parenthood as Separate Relationships**

That marriage is the moral precursor of co-parenthood is enshrined both in folk wisdom and in legal regulations. Legally, marriage is the only way for men to become parents by default: it is only married men who benefit from the presumption of fatherhood when a child is born. In this way, agreement to marry is taken to be equivalent to the agreement to co-parent, for both

spouses. It is only if the husband believes that he has reasons to doubt that he participated in the creation of the child that lawmakers may become interested to pursue that doubt and maybe reorganise responsibilities in relation to the child.<sup>4</sup>

The family based on marriage has long been seen as the ‘basic unit of society’, its *natural* heart, worthy of protection by the state. This association between family, marriage, and co-parenthood has been so pervasive that human rights documents collapsed these relationship forms under the heading of the right “to marry and to found a family”.<sup>5</sup> In time, this formula has been updated as the “right to marry and right to found a family”, in order to “cover cases in which national legislation recognises arrangements other than marriage for founding a family”.<sup>6</sup>

The progression from marriage to ‘founding a family’ does not match everyone’s life-course – and children do not arise only in this kind of setting. Today, many marriages end before the children reach adulthood. As traditional gender-based roles and divisions of labour in co-parenting are increasingly renegotiated, marriage does not seem to offer an explicit or useful ‘recipe’ for co-parents’ moral duties to each other. In some countries, more children are born out-of-wedlock than to married couples; across the EU, 42% of births were out-of-wedlock in 2018.<sup>7</sup> Finally, the association between marriage and co-parenting has had a number of negative consequences for parents and children, such as encouraging parents to stay married ‘for the sake of the children’. This is problematic in light of findings in social sciences emphasising the harms caused to children by inter-parental conflict and the deterioration of the relationships in the family.<sup>8</sup>

At the same time, it is increasingly deemed to be in children’s interests not to have their close ties severed. Children should be able to maintain a relationship with each of their parents regardless of whether the parents are married to each other. Parental responsibility therefore increasingly creates a lasting relationship between the co-parents, which displaces the marital relationship between them from centre stage in relation to the child. If marriage used to be seen as the lifelong commitment within which reproduction and parenting ideally unfolded, it is increasingly co-parenting that creates a lasting relationship between parents. In common parlance, a family becomes ‘broken’ upon parental divorce. However, if the duties of co-parents are not dependent on marriage, and persist after the divorce between the parents, then that ingredient of the family does not need to become ‘broken’: it is only the marital relationship that has ended.<sup>9</sup>

So far, we have focused on the presumed connection between *marriage* and parenthood. However, the problem extends further: even when marriage is not considered necessary for co-parenthood, the presence of a romantic relationship between the co-parents and, preferably, their co-habitation as a couple, usually still is. At the very least, this is still considered the (desirable) default arrangement. While this connection between romance and co-parenthood may not always be legally enforced, it is culturally powerful and can be harmful. It discourages friends from being co-parents or makes it difficult or impossible for them to access adoption or fertility treatment together, even though this may be their only possibility to become parents in their circumstances, and even if they would make great parents (and great co-parents!) for children in need. For those parents who are romantically involved with each other, it creates similar problems to those already discussed with regard to marriage and parenthood: unmarried romantic couples who are parents may decide to stay together ‘for the kids’, just like married couples. They too may not sufficiently anticipate the possibility of having to co-parent without the presence of a romantic relationship between them, in the event of a separation. Finally, it is not just that the entanglement of romance and co-parenthood can have harmful effects, as we have shown. At a basic level, the two relationships simply involve different aims and produce different goods: co-parenting is more than an expected extension of other types of commitments (such as marriage or a romantic relationship, or even friendship). Therefore, it should be acknowledged as a moral relationship in its own right. This is important both when there is and when there isn’t a romantic relationship between co-parents.

### **3. The Case for Explicit Agreements between Co-Parents**

So far, we have argued that co-parenthood needs to be acknowledged as a relationship independent from marriage or long-term couple-hood. But what are the moral stakes of this relationship, and what moral duties does this give rise to between the parents? In this section, we argue that the features of the co-parenting relationship – such as longevity, high risk, and high cost – suggest that the first and foremost moral duty co-parents have to each other as co-parents is to come to explicit agreements regarding the most important areas of potential conflict between them.

Parenthood is a highly risky, long-term and cost-intensive endeavour. How one will fare as a parent has the potential to significantly affect one’s well-being over a long period. While there is a plethora of factors that influence outcomes for a parent, some of them outside anyone’s

control, the behaviour of one's co-parent stands out as a particularly important factor. Because they have the potential to so significantly impact each other's lives – both for good and for bad – co-parents have a particular responsibility to each other to think ahead in order to, if possible, avoid particularly bad outcomes for the other. Parents will often financially provide for a child together and rely on each other economically and with regard to childcare, which makes them particularly dependent on each other. If one co-parent takes on most of the work associated with caring for the child and gives up their job, for example, this may come at a significant cost for this person in the case of a later separation. This cost can and should be discussed explicitly, in order to prevent or at least mitigate possible conflicts or harmful outcomes that could otherwise occur down the road. Co-parents also have to take many far-reaching decisions together, as they share the authority to act on their child's behalf. Relevant decisions include, for example, those regarding children's schooling or medical care. While of course not all of these questions can be anticipated, many can and should be discussed ahead of time.

We think that the moral duty to make one's expectations explicit applies to all relationships that have the feature mentioned above, namely the potential to significantly affect another's wellbeing. For example, it would be a moral failure to invite a long-distance romantic partner to move in together in one's city, requiring them to leave behind their friends and family, if one were planning to end the relationship. However, the co-parenting relationship is a particularly extreme case of mutual vulnerability to each other's decision-making: one can move back to one's hometown after a romantic relationship ends, and work on rebuilding one's life after the break-up. However, if a child is involved, one's future is no longer open in the same way: co-parents share responsibility for the children they have together, and this will restrict their future choices and tie them to each other's.

Now, why do there need to be explicit agreements in order to fulfil this moral duty? Is it not the case that co-parents will automatically consider each other's interests and will avoid acting in ways that have the potential to harm each other? While some types of relationships – such as friendships or less serious romantic relationships – can work well by just 'going with the flow', there are significant downsides to this when it comes to co-parenting due to the features of the co-parenting relationship just mentioned. It is reasonable to assume that anyone who co-parents outside of a romantic relationship will already be aware of the need to be clear about the expectations that parents have of each other. This is less likely to be the case when co-parents are romantically involved with each other. The association that is made between romantic relationships and co-parenthood facilitates the disinclination to view the decision to embark

upon co-parenthood as one that requires explicitness over and beyond the commitment to the romantic relationship itself.

People may start a romantic relationship because they are attracted to each other and get along well. However, there may be significant differences in the ways in which they view personal and collective responsibility, parental rights and duties, and so on, that they may not always be fully aware of before they become parents. Even within the same society, there exists a wide range of views about co-parenting, some of which may be difficult to reconcile. It is common for people to be influenced by the way in which they were raised themselves; it may seem ‘obvious’ to one co-parent that things must be done a certain way, while the other may have quite different ideas in that regard. Insofar as they appreciate and trust each other as lovers, they may think they have reason to believe that they would do just fine in the co-parenting department as well, an assumption that may or may not hold true. Prospective co-parents may also disregard warning signs that their respective views might not be easily compatible. Social cues such as the belief that ‘love conquers everything’ may lull them into a false sense of security and further discourage them from taking their differences seriously. Defecting on the relationship – especially after marriage – may be seen as shallow and uncommitted, and may be frowned upon socially, even where there are serious incompatibilities between the partners’ worldviews.

Even if, or especially if, their romantic or marital relationship seems to be flourishing, prospective co-parents need to reflect on their own and each other’s views about co-parenthood independently of these relationships. They need to discuss the possible implications of a change in their romantic relationship as they embark upon parenthood. Failing to do so may leave them unprepared – more unprepared than they need be – for what is coming for them if the romantic relationship ends. As we will see in a later section, this is often a source of significant post-separation co-parental conflict. Continuing to co-parent with a former partner can be challenging in many ways. One may find oneself restricted geographically: the relocation of one parent may make co-parenting difficult. One will need to accept that a former romantic partner’s new romantic partners will be close to one’s children. Having discussed these possibilities *before* the dissolution of their romantic relationship, presumably in the absence of conflict or resentment, would better equip them for what may lie ahead. Even if the intimate romantic relationship between the parents lasts throughout their lifetimes, conceiving of co-parenting in its own terms and making explicit agreements can help prepare the parents for the significant changes to their lives that parenthood will bring.

Thinking about the romantic and the co-parenting relationship in their own respective terms can also benefit the romantic relationship, if there is one. One of the effects of new parenthood can be that the co-parenting relationship takes over and replaces the romantic relationship between the parents. This can happen insidiously and without being questioned: of course, becoming parents necessitates significant commitments, and other adult interests might need to take a back seat, at least for a while. However, adult commitments are also important, and parents have interests beyond their co-parenting. Simply forgetting about them can backfire and lead to frustration and resentment. Romantic relationships often suffer when a couple is in the thick of (new) parenthood, when it becomes all too easy to start viewing the other as merely a co-parent. Qualitative research on new parents has found that parenthood can cause a persisting dip in the quality of the romantic relationship between the parents; it, and its pleasures, may easily fade away.<sup>10</sup> This can also cause a crisis in the relationship between the co-parents when the children leave the home. Keeping an awareness of the importance of both types of relationships, on their own terms, could help prevent the risk of entirely subsuming the couple relationship into the co-parenting one – as well as the other way around.

We do not think that such explicit agreements between co-parents must necessarily be in written form, much less that they should have legal standing (although we explore some of the possible legal implications of our proposal below). This is because such agreements will often have content that is not legally enforceable, and they may need to change over time (see next section). Their function is to enable (future) co-parents to make informed decisions about the risks to their wellbeing that they are taking on in assuming the role of parent together with another person. As long as that requirement is met, it does not matter very much what form they take. However, the kind of explicitness we envisage is certainly significantly different from the current dominant societal practice, in which co-parents may well plan ahead, but are not encouraged to reflect on their co-parenting relationship independently of their romantic bond. It also involves a much more frank and detailed discussion of potential scenarios, including a break-up, which today is often considered taboo.

In summary: co-parenthood is a relationship that is distinct from romance or marriage. It is also a relationship that, because of its high stakes, requires explicit discussion and planning on the part of co-parents. This is not just prudent, but a moral duty: given the high degree of vulnerability to each other's behaviour, to not be explicit about one's values and expectations about co-parenthood within and outside of a marriage or romantic relationship, is to put each other's well-being at a significant and at least partly avoidable risk.



#### **4. Coping with Change: The Need for Re-negotiation**

We have argued in favour of a moral duty on the part of co-parents to come to explicit agreements regarding important areas of potential conflict before they embark on their co-parenting project (or at a later point, if they have not already done so). However, planning can only go so far. The length of the co-parenting relationship means that a significant amount of uncertainty is unavoidably a part of the picture: it is quite difficult to predict possible changes in circumstances and preferences over 18 years or more. Particularly with regard to raising their first child, co-parents may face rather significant epistemic hurdles: it is difficult to predict what it will be like to be a parent – and to parent together. Moreover, every child is different, and co-parenting is an ever-evolving endeavour. The fact alone that a child's needs constantly change as she grows up means that parents are always confronted with new challenges. For example, when a child is a baby, the main challenge for the parents may be how to provide hands-on care, how to coordinate the tasks of feeding, changing diapers, waking up at night, etc. Later on, questions regarding schooling, activities with friends, or hobbies, may be more prominent. Apart from new developments that originate with the child herself, there can also be other changes in circumstances, brought about by sicknesses, disabilities, job losses or promotions. For example, one of the co-parents may take on a more demanding job, want to move to another location, or wish to end the romantic relationship (if there is one) with the other co-parent. This means that co-parents cannot devise a grand plan when they first become parents and then simply stick to it – and doing so, as we shall now argue, might anyway not be compatible with respecting each other's autonomy. Instead, they may stand under a moral duty to re-assess and re-negotiate in good faith when this becomes necessary. Respect for each other's autonomy may generate a duty to show a certain amount of flexibility regarding co-parental arrangements. As we shall argue, this should not be understood as a counterargument to the need for explicitness and planning – which we have argued for in the previous section – but rather as further elaboration on how this process should work over time, given the longevity of the co-parenting relationship.

It is quite common for a co-parent to change their preferences regarding how their co-parenting arrangement should work. They may then approach the other co-parent(s) and ask them to re-negotiate. Needless to say, this can lead to significant challenges and conflict when co-parents' preferences do not align. Philip Cook<sup>11</sup> describes a scenario that is relevant here: a couple, Andy and Belle, become the parents of a child. At some point, their romantic relationship ends. Andy

then moves out of their home and wishes to change their parenting arrangement: although he will still parent their child to some extent, he only wants a minimum of coordination with Belle now that their romantic relationship has ended. Furthermore, Andy offers to compensate Belle for the increased costs of her becoming the primary carer of their child. Rather than discussing most aspects of their child's upbringing in depth and frequently checking in with each other, they will, according to Andy's wishes, largely parent separately from each other. Belle disagrees with Andy's suggestion and wishes for him to continue their co-parenting style largely as before. Cook argues that Andy acts wrongly in withdrawing from his previous co-parenting arrangement with Belle.<sup>12</sup> She decided to become a parent on the assumption that this would always be a shared activity with Andy. Andy has incurred a duty to co-parent with Belle in a certain manner that is based on their original shared intention. According to Cook, Belle can therefore demand that Andy fulfil this duty to her: he cannot amend this agreement unilaterally.

This is a situation in which, no matter what, there will be costs. If Andy gets his wish, Belle will be burdened: she relied on co-parenting in close cooperation with him. At the same time, continuing with this arrangement would arguably significantly burden Andy. With the romantic relationship between them having ended, he may not want to have frequent interactions with Belle anymore. He would now prefer an arrangement that does not require day-to-day cooperation. Assuming that the child's interests are not compromised whichever of these courses of events is chosen, who owes what to whom in this situation? Is Belle failing a moral duty to be open to re-negotiating their co-parenting style, or is she justified in insisting that their original agreement continue?

We think that it is useful to separate two aspects here: one concerns the degree of daily coordination between Andy and Belle, the other the attempted shifting of caregiving duties. Andy and Belle have experienced a change in their relationship status through their breakup. Their co-parenting relationship continues but it seems unreasonable to demand that the details of it remain unaffected by this change. Co-parenting together intensively worked well for a while, and they certainly announced their intentions to do so, but the circumstances have now changed because they are not a couple anymore. Starting from the plausible assumption that everyone has a right to exit a romantic relationship and given the emotional turmoil that often comes with this at least for a certain time, it seems unreasonable to insist on the same level of day-to-day closeness post-separation. However, Cook's example also contains a shift in caregiving duties: Andy wishes to reduce his caregiving burden. This might make significant

demands on Belle even if she receives financial compensation, and – unlike the change in daily coordination – is not something that needs to follow from their separation. At the same time, wishes for shifts in caregiving duties or other key aspects of a co-parenting arrangement can certainly arise in a co-parenting relationship and it is not clear how these are to be viewed from a moral perspective, particularly when the other co-parent(s)' preferences are not in alignment with them.

There seems to be a tension between two desiderata here. On the one hand, it seems desirable for co-parents to be able to rely on each other to continue acting largely as beforehand. On the other hand, each co-parent also has an interest in being able to maintain a degree of freedom to change their own behaviour in accordance with their preferences or changes in circumstances. We have argued that respect for each other's autonomy requires at least some level of openness to change. However, a moral duty to re-assess a co-parenting arrangement in order to respect the other parent's autonomy might now make one worry that co-parents could too easily adapt their agreements and unilaterally back out of key aspects of their co-parenting relationship, thereby essentially forcing a re-negotiation on the other parties. There may be some core moral duties of co-parents that apply regardless of what any explicit previous agreement between them was and that no co-parent can simply choose to ignore or back out of. If the change in co-parenting style that Andy wishes to implement falls foul of these, then he might be acting wrongly.

## **5. Non-negotiable Duties?**

We have argued that parents should make explicit co-parenting plans with each other, and that the nature of the co-parenting relationship entails that these will require ongoing re-negotiation in many cases. However, are there some specific moral duties that co-parents should always adhere to and that are non-negotiable? Here we consider some plausible candidates: not alienating the child from the other parent; avoiding 'trapping' one's co-parent in a vulnerable position through an unequal distribution of responsibilities and burdens; and accepting at least some level of shared decision-making with the other co-parent(s). To be clear, we do not intend to provide a full account of the non-negotiable moral duties of co-parents (there could be others not mentioned here) and we do not aim to settle fully the content of the duties we do explore. At this stage, we merely aim to open up the discussion about possible non-negotiable co-parental duties rather than coming to any definite conclusions.

First, let us consider a possible moral duty not to sever the child's relationship with the other co-parents. Such a duty can be partly justified by reference to the child's own interest to maintain close ties with all parents. Insofar as the relationship of the child with each parent is important for the child, that relationship needs to be protected. What we are interested in here, however, is whether this is also a co-parental duty. It seems highly plausible that it is: having one's relationship to one's child severed is harmful to most parents. Now, the aim of supporting children's relationship with one's former partner may be difficult to achieve in practice. In particular, this can be difficult to do when the parents no longer wish to be close to each other. Throughout the Western world, to different degrees, courts and mental health professionals are confronted with the phenomenon of parental alienation.<sup>13</sup> Following the deterioration of the relationship between the parents, one parent may turn the child against the other parent. This can be done intentionally as well as implicitly, by displaying a consistently negative attitude towards the other parent, whom the child may then begin to resent and ultimately even reject.<sup>14</sup>

Parental alienation, described sometimes as a form of family violence or a mental health issue in itself (Parental Alienation Syndrome), is not as uncommon as one may hope it to be. Though exact numbers are difficult to come by, recent studies place the estimate number of cases of parental alienation in the tens of millions of cases in the US alone.<sup>15</sup> It is easy to see how one can go down this road. In the wake of the end of a close relationship, one may consider oneself entirely justified to feel anger, betrayal, disappointment, or any number of negative emotions arising from that event – whether one's perception is justified or not. It is a high demand to have to contain such emotions and display the opposite attitude towards the person whom you perceive to be their cause, for the sake of maintaining your relationship as co-parents, and their relationship with your children. Moreover, one may genuinely believe one's child to be in danger of being likewise disillusioned or hurt by the other parent. (Of course, actual cases of endangerment of the child or of a parent by the other parent can make severing the relationship legitimate, or even obligatory for the wellbeing of the child.)

It is only in recent decades that there has developed a societal expectation that one should even consider making efforts to continue co-parenting post-separation. This comes hand in hand with the expectation that parent-child relationships should not be dependent on the existence of a marital relationship between parents. The best solution again is for parents to consider the danger of any conflict between them, which could lead them to want to alienate the other parent from the child, early on. What will happen in the event of a dissolution of the inter-parental relationship is possibly one of the most difficult conversations to have as one embarks upon

parenthood together. But by having that conversation when the relationship is functional, co-parents give themselves and each other the opportunity to reflect on their relationship as co-parents and as spouses or lovers, respectively, on their own terms. This helps disentangle these roles from each other, at least in principle, at a moment not burdened by conflict or resentment. It may be difficult to consciously relate to a person as having multiple roles in relation to us, and to continue to relate to them in the remaining roles when one terminates, especially in this most intimate sphere of our lives. However, this is exactly what happens – and what needs to happen from a moral perspective – in cases of post-separation co-parenting.

The moral duty to not undermine or sever the other parent's relationship with the child may be the most obvious non-negotiable duty co-parents owe to each other. While it is important and useful to discuss this explicitly and early on, as we just mentioned, it applies even if one of the co-parents changes their mind at some point – it is not something that can just be re-negotiated. A separation between the parents may mean that each parent gets less time with the child, or that there is a redistribution of responsibilities. There could be difficult questions surrounding what the limits of reducing one parent's time with the child are while still allowing the parent-child relationship to continue unharmed. There is also a flip side to this. A co-parent arguably must not simply drastically reduce time spent with a child in unilateral fashion. To come back to the example of Andy and Belle, maybe Andy does violate a duty to Belle if his proposal means that he now interacts so little with their child that the parent-child relationship, in a substantial sense, has effectively ended, leaving Belle a single parent.

This brings us to a second possible set of duties also at play in the Andy-Belle scenario. Co-parents may owe each other duties regarding the distribution of parental burdens. As parenting presupposes significant burdens, parents should ensure that the distribution of those burdens between them is fair. Maybe Andy, in wanting to adopt a different co-parenting style, shifts too much of the caring burden for their child onto Belle – even if he offers her additional financial compensation. At the same time, however, there need not always be equal sharing of burdens between parents. Some co-parents may actually prefer unequal sharing, and this need not be unfair.

For example, let us say that a woman, Anna, decides that she wants to become a parent. She approaches her friend, David, and enlists his help. David donates sperm to Anna, and they agree that he will be the child's legal father, and that the child will know him as her father. However, Anna is the primary parent and the one involved with the child's day-to-day care. This example is different from that of Andy and Belle in some important respects. Anna and David are not in

a romantic relationship with each other. Instead of Anna counting on David to participate in sharing the burdens involved in co-parenting, she counts on him *not* being so involved. Should David change his mind and decide that he wants to parent their child on equal terms after all, this would counter their previous understanding. At the same time, such a change in plans might be beneficial to the child: it may be better to have two committed parents who are willing to spend significant time with the child rather than just one. Again, a re-negotiation may be in order in such a case. Another scenario to be considered is that Anna might become in some way unable to take care of their child. Should this happen, as a legal parent, David would find himself facing full-time parental responsibility – something that he may have counted on not ever being the case. Entering a co-parenthood relationship, however unequal, comes with the acceptance of some possible changes in the distribution of responsibilities and burdens between those involved. Given that co-parents are together responsible for their child, one co-parent's inability to fulfil their duties shifts the burden to the other(s).

As we have mentioned, unequal distributions of burdens need not be morally problematic if all co-parents have agreed and continue to agree to this. A particular issue is worth considering, however: namely distributions of responsibilities and burdens between co-parents that have the effect of making one parent asymmetrically dependent on the other and thereby trapping them in a particularly vulnerable position. The typical scenario would be one in which one of the parents is doing most of the care work for the children and is entirely financially dependent on the other. Such a situation significantly limits the caregiver's options and weakens their opportunities for re-negotiation with the other parent. By the time a fulltime caregiver may want to suggest a new distribution of responsibilities, they may be unable to re-enter the paid workforce.<sup>16</sup> Because of the importance of respecting each other's autonomy, it is morally problematic to engage in a co-parenting style that puts the other in a disproportionately vulnerable state. At the very least, co-parents should identify ways to mitigate one-sided dependencies as best they can. The problem in these cases is not so much the unequal distribution of responsibilities as such but the effects this tends to have on the distribution of power in the relationship and the expected outcomes in the case of a separation.

This leads to a third, related issue, namely that of shared decision-making. In whichever way co-parents decide to organise childrearing, there could be a moral duty to accept some degree of shared decision-making in relation to the child. When one co-parent has no decision-making powers at all, then she may not even count as a co-parent, since the responsibility and authority to make decisions with regard to the child is a key feature of parenthood status. Having a 'boss'

and a 'subordinate' parent also flies in the face of a relationship in which the participants respect each other as moral equals. Again, however, this is rather complex and a matter of degree. For example, in the case of Anna and David, Anna may well make most decisions about their child's schooling, nutrition, etc., without this raising any moral concerns. However, if David could not ever question any of Anna's decision-making and were to blindly follow her orders, he would be wronged in that scenario. While co-parents can *delegate* decision-making in some areas to each other without issue, it appears that they cannot abdicate their responsibility entirely without in effect giving up their status as a co-parent. Again, by discussing their views about childrearing early on, co-parents give themselves and each other a chance to reflect explicitly on which decision-making strategies they will employ and how they will deal fairly with disagreements that have to be solved together. As they gain experience, they will revise their views. They can negotiate together around safety versus freedom to explore, education versus leisure, etc. They can also discuss the implications of relationships that children themselves may form, such as friendship or mentorship, or maybe new co-parents that may be added following, for example, the reorganisation of co-parents' relationships.

## **6. Legal and Societal Implications**

Conceiving of co-parenthood as a relationship in its own right, generating duties and privileges in relation to the child, but also to the co-parent, will help disentangle it from other close personal relationships such as romantic coupledness. As moral and political ideas on the moral status of children have evolved, parents and their interests are no longer the only deciding factor in post-separation outcomes. Recognising co-parenting in its own right would also bring more transparency to familial relationships. The co-parental relationship would no longer need to piggyback on the marital relationship. Parents who conceptually separate the two types of relationships may more easily avoid falling into relational patterns in their interaction with the child and with each other as parents. 'Ask your mother', when a child needs something, may no longer be an acceptable response, unless the parents have explicitly agreed that it is. In the long term, this would change societal views on co-parenthood and in particular reduce the conflict that currently often results from the entanglement of couple-hood and co-parenting.

We have focused on an ethical analysis of the co-parenting relationship. But do our proposals also have legal implications? Laurie Shrage as well as Samantha Brennan and Bill Cameron have suggested the introduction of a separate legal framework for co-parenthood.<sup>17</sup> Would it be

possible for the explicit agreements co-parents should arrive at to be used as a basis for a co-parenting contract with legal status? It should be noted that because they are rightly subject to re-negotiation, and because of the matters they cover, such agreements may not be enforceable. Nevertheless, depending on the legislature, a framework of the duties of co-parenthood, listing the parents' expectations and agreements in relation to their children's upbringing, would plausibly help relieve some of the pressure on divorce cases by providing a point of reference that could be used in mediation procedures. As custody of children is, in many jurisdictions, one of the core sources of conflict and legal mediation in divorce cases, prior co-parenthood agreements would remove a significant burden from divorce courts – not because they could be legally enforced but because they would secure a better understanding of co-parents' expectations in 'peacetime', and thereby reduce conflict. Presumably, co-parents will also sometimes wish to make changes to these agreements upon dissolution of the marriage. These changes could be made as a part of divorce proceedings, but also on an incremental basis, separately from the divorce.

Conceiving of co-parenting as a moral relationship in its own right would also displace marriage from determining parent-child relationships. This can have a host of implications for children's rights. Our approach would certainly fit well with a legal, not just moral divorce between marriage and parenthood. For example, in absence of the fatherhood presumption through marriage, a child conceived by a wife with a man other than her husband might then no longer acquire two parents by birth. We do not think that this would be a negative implication. The husband might wish to take on legal fatherhood anyway, or he might not. The child's biological father might be another candidate for taking over this role. Either way, the fatherhood presumption through marriage is not an unqualified good, and may be an unnecessary source of conflict, when e.g., the husband believes he has reasons to doubt his biological fatherhood<sup>18</sup>.

By detaching the marital from the co-parental relationship, state institutions would also be more able to focus on the relevant commitments when making important decisions about children's care. In many jurisdictions, marriage, or at least co-habitation between the prospective parents as a couple, is a condition for access to adoption or fertility treatments. Having a framework for co-parenting commitments would help circumvent the need to rely on other relationship forms as guarantors for such commitments. It could also reduce the pressure to form romantic relationships or marry in order to become parents.

At least in principle, marriage does not have a deadline. One marries for life – until proven otherwise. However, as some parental duties are tied to specific interests that children have as



children, they may be extinguished when the child reaches maturity. There may be duties that parents have qua parents for as long as they live, and duties that are time-bound in this way. This will also translate to duties that co-parents owe each other. For example, Anna and Mary may be bound by their co-parenting to reside not too far from each other so that they can exercise their co-parental responsibilities while their son, Marc, is a child. However, once Marc is an adult, no longer in the custody of his parents, some of the duties that his parents may have incurred to him or each other in that capacity may be extinguished. Insofar as parents maintain duties towards their adult children, they may also maintain duties towards each other. In this paper, we do not determine whether this is the case, or which these duties might be. By lifting co-parenting as a moral relationship in its own right, independent from other relationships between adults, we hope to offer a stronger basis from which to explore its requirements.

## **7. Conclusion**

The idea of the family as a safe haven, in which the parents, married to and in love with each other, lovingly raise their children, may be romantic. However, it leaves out a considerable number of children and adults and is not always as safe and harmonious as we might have hoped it would be. Considering the socio-cultural changes that are sweeping across the Western world, we suggest a more realistic framework that is more likely to reflect the diversity of the societies in which we live and the moral and legal focus on the interests of children as adults' moral equals, whose moral relationships should not be subsumed to the interests of others.

Explicit and open discussion of the terms of a decision to co-parent may not be the pinnacle of romance. However, it helps to reveal expectations that prospective co-parents have of co-parenting, to themselves and to each other. As these expectations change, an ongoing discussion of co-parenting allows mutual awareness of these developments. Co-parenting, especially when undertaken for the first time, inevitably raises challenges that parents may not have been aware of at the outset. As a result, re-negotiation is an important aspect of co-parenting.

Dynamics between parents as their own relationship, and their children, develop, may also change. Having explored their attitudes in the face of significant hypothetical changes in their intimate relationship (such as a divorce or a separation) may reduce the surprise and uncertainties in relation to their post-separation co-parenting. At the very least, it will have made them aware of their own and each other's attitudes. This may contribute not only to

informing them of each other's expectations, but also to enhance each parent's autonomy by having stimulated them to make their views explicit to themselves and to the other parent(s).<sup>19</sup>

## 8. Notes

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<sup>1</sup> Daniela Cutas, Anna Smajdor, Kristien Hens, 'Procreative Procrastination: The Ethics of Postponed Parenthood', in Dominic Stoop (ed.) *Preventing Age Related Infertility Loss* (Dordrecht: Springer, 2017), pp. 141-156.

<sup>2</sup> Laurie Shrage, 'Decoupling marriage and parenting', *Journal of Applied Philosophy*, 35, 3 (2018), pp. 496-512. Philip Cook, 'On the duties of shared parenting', *Ethics and Social Welfare*, 6, 2 (2012), pp. 168-181. Samantha Brennan, Bill Cameron, 'Is marriage bad for children? Rethinking the connection between having children, romantic love, and marriage', in Elizabeth Brake (ed.) *After Marriage. Rethinking Marital Relationships* (New York: New York University Press, 2016), pp. 84-99. Shrage as well as Brennan and Cameron focus on the legal regulation of marriage and parenting rather than on moral duties. Cook makes a case for co-parental moral duties based on shared intentions, which we do not deem necessary to ground such duties.

<sup>3</sup> Anca Gheaus, 'Children's vulnerability and legitimate authority over children', *Journal of Applied Philosophy*, 35, 1 (2018), pp. 60-75.

<sup>4</sup> Daniela Cutas, Anna Smajdor, 'Duped Fathers', 'Cuckoo Children', and the Problem of Basing Fatherhood on Biology; A Philosophical Analysis', in Katharina Beier, Claudia Brügge, Petra Thorn, Claudia Wieseemann (eds.) *Assistierte Reproduktionsmedizin mit Hilfe Dritter* (Dordrecht: Springer, 2020), pp. 172-182.

<sup>5</sup> Universal Declaration of Human Rights Article 16(1), and European Charter of Human Rights, Article 12.

<sup>6</sup> European Commission staff working document 2016: <https://eur-lex.europa.eu/legal-content/SV/TXT/?uri=CELEX:52016SC0158>

<sup>7</sup> Eurostat 2020. 42% of births in the EU are outside marriage, available at <https://ec.europa.eu/eurostat/web/products-eurostat-news/-/DDN-20200717-1>.

<sup>8</sup> Susan Golombok, *Modern Families: Parents and Children in New Family Forms* (Cambridge: Cambridge University Press, 2015).

<sup>9</sup> Whether and to what extent it is accurate to equal divorce with the breaking of a family *at all* is another issue, which we will not take up here.

<sup>10</sup> Judith Feeney, Lydia Hohaus, Patricia Noller, Richard Alexander, 'Becoming Parents. Exploring the Bonds between Mothers, Fathers, and their Infants' (Cambridge: Cambridge University Press, 2001).

<sup>11</sup> Cook 'On the duties of shared parenting', pp. 170-171.

<sup>12</sup> Cook, 'On the duties of shared parenting', p. 172, p. 176.

<sup>13</sup> Jennifer Harman, Sadie Leder-Eldewr, Zeynep Biringen, 'Prevalence of parental alienation drawn from a representative poll', *Children and Youth Services Review*, 66 (2016), pp. 62-66.

<sup>14</sup> One reviewer asked whether co-parental duties include or imply a duty that co-parents refrain from terminating their relationship through adversarial family courts. While in practice the degree to which this is possible or desirable will depend on local legislature (e.g., in Sweden divorces tend not to play out in adversarial court proceedings and custody arrangements are by default not settled in court but agreed upon between the parents), we do accept this as an implication of our argument. Furthermore, because of the basic respect that they owe to each other and the vulnerability inherent in intimate relationships, we also believe that spouses/partners who are *not* parents ought not to engage in adversarial separations. We also believe that *no one* ought to engage in adversarial exchanges, to the degree that this is possible and desirable morally (i.e., some entanglements might necessitate legal support to disentangle, and some former partners may wrong others in ways that necessitate legal intervention). Co-parenting adds another layer to a basic duty of respect for others, and especially (formerly) intimate others.

<sup>15</sup> Harman et al. 'Prevalence of parental alienation'.

<sup>16</sup> The vulnerability that arises from being a fulltime caregiver was famously described by Susan Okin. Susan Okin, *Justice, Gender, and the Family* (New York: Basic Books, 1989), pp. 149-152.

<sup>17</sup> Shrage, 'Decoupling marriage and parenting'. Brennan and Cameron, 'Is marriage bad for children?'

<sup>18</sup> Cutas and Smajdor, 'Duped Fathers', 'Cuckoo Children', and the Problem of Basing Fatherhood on Biology'.

<sup>19</sup> The research for this paper was in part funded by the Swiss National Science Foundation, grant number IZSEZO\_185577. We are grateful for the support. We would also like to thank Anca Gheaus, Lars Lindblom, the

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audience at the Swedish Congress of Philosophy at Umeå University in June 2019, and two anonymous referees, for their helpful comments on previous versions of this paper.