Contested Paternity: Why, and to Whom, Genetic Paternity Testing Matters

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Abstract: This paper reports the preliminary findings of a qualitative investigation into the experience of genetic paternity testing. It provides a typology of the main situations where paternity is contested through the use of genetic testing; that is, why and to whom paternity testing matters. Paternity has generally been accepted as a taken for granted state that defined the relationship between a child born within an established partnership and the male partner. The development of a cheap, efficient and commercially available genetic test for accurately determining biological paternity changed this reliance on presumed paternity. Initially a tool of the State to enforce paternal responsibility, it has more recently become a facilitative mechanism for men to know with absolute certainty about their paternity or non-paternity. The main situations in which testing is used involve men and women caught up in relationship breakdown and contestation over paternity and Child Support. Paternity testing is sought either by the man to terminate parental responsibility or by the woman to ensure it. These complex situations are reported from the perspective of both men and women. The paper then discusses some of the key social issues regarding the use of this new technology and argues that its availability and use matters to all of us.

The DNA paternity test is a powerful technology that offers definitive, clear cut findings. But, in reality, its human impact rarely reflects the precision and decisiveness the technology promises. In other words, while the technology itself can be said to be neutral, the human ends to which it is put is what gives it intention and purpose (Wajcman 2004). The meaning humans attach to what the technology reveals (the results of the test), the significance they assign to it and what they do about it determine the human consequences. The test has the capacity to change forever the way people relate to each other, in essence to ‘change the terms in which social, political and economic relations are played out’ (2004:8-9).
The purpose of the study being reported in this paper was to provide a sociological analysis of the human relationships that are interrupted by a genetic technology, the paternity test, to determine a primary social relationship. Paternity has generally been accepted as a taken for granted state that defined the connection between a child born within an established partnership and the male partner. A biological relationship was almost always presumed to exist and, unless the man could be proven to be ‘absent, impotent, or sterile’ at the time of conception, he ‘was locked into the role of fatherhood’ (Kaebnick 2004:49) Thus, despite the strong primacy given to the necessity for biological ties, for most of history the role of a father has been primarily a social relationship shaped by customary practices, institutionalised within marriage and proscribed by law. In this context, the contestation of paternity involved partial knowledge and competing claims that were difficult to adjudicate. The “marital presumption” protected the legitimacy of a child born within wedlock and disallowed challenges to paternity, thus legally protecting husbands from publicly attacking the fidelity of their wives and the paternal-child relationship (Hirczy 1995).

The introduction, availability and marketing of a transparent and decisive method for determining genetic relatedness changed all of that. The test is relatively simple one based on matching banding patterns on repeat sections of non-coding or 'junk' DNA on samples from at least one parent and a child to establish or rule out genetic relatedness. It is different from the earlier blood testing method insofar as its results are definitive, with 99.9% accuracy claimed by testing companies and its social impacts are immediate – it rules paternity in or out. A more accurate method of determining paternity, in its initial usage, served the interests of governments in the Western world to ensure that reluctant fathers could be identified for Child Support
purposes. By the mid nineties, however, the Family Court and other formal processes were able to be bypassed when laboratories began offering testing on a commercial basis.

The easy accessibility of the tests has thus shifted the locus of demand from court ordered tests to resolve disputed paternity to individually motivated tests to potentially absolve paternity and paternal obligation. However, the test not only affects the individual who instigates it but also provides information about interpersonal and family relationships. Yet, until now, no research has been done on the social impacts of DNA paternity testing.

The research thus set out to investigate the usages of paternity testing technology. The questions of particular interest to the study were: who was being tested; why they were being tested; and what were the personal and social dynamics of testing? Following Scutts’(1983) methodology, consumers of paternity testing were asked to contact the researchers and tell about their experience of paternity testing. The preliminary qualitative results of the study are reported as the main situations in which genetic paternity testing is currently being used; that is, why and to whom paternity testing matters.

The main people to whom paternity testing matters are men and women caught up in divorce or relationship breakdown where contestation over paternity becomes a flash point of disputation over custody, access and Child Support issues. Paternity testing in these cases is sought either by the man to terminate parental responsibility or by the woman to ensure it. The main usage of the technology has thus become essentially a
gendered conflict over paternity establishment or disestablishment.

Evading Child Support or simply making sure?

Frustrated by outcomes of the Family Court and custody decisions and spurred on by paternity testing’s promise of a pathway to evade Child Support payments, many men seek testing. These cases probably constitute the largest proportion of men tested, as well as the majority of single parent or “motherless testing”. According to the largest testing company in Australia, eighty percent of the men tested in these circumstances turn out to actually be the biological father (Stapleton 2002). Although these men have not participated in the study, proportional to their expected numbers, those who have provide a compelling rationale for unrestricted access to both court sanctioned and “private” or “motherless” testing to clarify paternity. Fathers report having suspicions about their paternity because the child does not look like them or there are unexplained whispering and tears in the family at the time of child's birth, friends drop hints, and so on. They then either take on “the war” with the Family Court or have a surreptitious test to clarify things for themselves before they take the next legal steps or, in some cases, do nothing further. For the men in the study, the technology revealed different outcomes and correspondingly very different human consequences and responses.

I needed to conduct the first test secretly (without anyone knowing) because, had the result been positive, then I would have happily continued to pay maintenance and done nothing further. Likewise the child would never have known (which is a most important consideration). Sadly, that was not to be… The results ruined my life when my ex-wife then ordered the child never to call me "Dad" again. And worse still, she is never allowed to see me again… I still think of [her] as my daughter. (Adam)
[The results showed that the child was] absolutely, definitely my son... I was rapt. That was exactly what I wanted in the first place. But it was just the fear that he wasn't my son - basically not knowing. ..It may not have made a difference in the long run but it's still nice to know. (Ben)

**Misattributed Paternity**

The rates of misattributed paternity, where men are misnamed as the father, are reported to be a common occurrence (for example, Baker 2000). In these instances, mothers do not reveal true paternity to either a current partner or to a new husband whom they marry because the biological father cannot or will not marry them. There is indication from the data that this latter situation may sometimes occur because of strict cultural taboos against unwed mothers. Unsurprisingly, these men are devastated when they find out about their non-paternity and see themselves as the “(stupid) unsuspecting husband”.

I decided to go ahead and have the test done [“on the sly”] and... the results came back negative – which blew me away... Mind you, I still consider her to be my child... So, the really sad consequence of all of this is that I have had all contact cut off... So it’s very sad, very nasty consequences. And I didn’t quite anticipate that. (Tony)

Men report that a subsection of these women, in the context of relationship breakdown and separation, use their knowledge of the father's non-biological paternity to win custody battles and Family Law settlements. In these circumstances, the fathers reported being either totally unsuspecting of their non-paternity, or if they did suspect it, chose not to pursue or acknowledge their suspicions. The mother sometimes also enlisted the assistance of the biological father in the process, despite him having had no previous contact or relationship with the child. This is a complex circumstance which effectively amounts to “fatherless testing”, or testing without the
knowledge or consent of the rearing father, a practice that is sanctioned by the Family Court for consent-to-testing purposes. Presumed biological ties are thus legally prioritised over the rearing father’s relationship with his child. The outcome of these challenges to paternity is that the rearing father legally becomes a non-father and, in most cases, loses both custody and access, which is devastating for him.

There is a child out there who loves me and was ripped away from me...I miss him every day. (Geoff)

The Denial of Paternity

Another set of cases involve situations where women were obliged to undertake a test or instigate the process because the father of their child, often advised by his lawyer, had denied paternity. The onus to prove paternity was placed on women if they wanted the father recorded on the birth certificate or if they required access to Child Support payments, which is contingent upon naming the father of the child. In each of these cases there did not seem to be any real doubt about the ex-partner being the biological father; rather the men were reported to be playing “mind games”. As an example, one father, after a protracted period of legal action to contest paternity, did not bother to pick up the test results. In essence, the actions of the father was seen by women to be a way of delaying and hampering the process of documentation and payment of Child Support for a lengthy period of time (often somewhere between twelve and eighteen months) so that the father “can get his affairs in order”.

[H]e wanted to use it as a way of stopping a birth certificate being created… for my son … so that [it] could not be sent into Child Support, so he wouldn’t have to pay anything for the time being. There was never any fear in his head that the child wasn’t his. It was just he’d been told somewhere along the line that if he put it off that way, he could sort of stall things for a while – so that it was more done for a stalling tactic. (Kate)
The women were deeply hurt by their partner’s accusation of non-paternity and the associated implication of “infidelity”. The denial of paternity was experienced by the women as a formal denunciation that was a source of public humiliation and “embarrassment” to them. It was seen as “an insult”, as “demoralising” and demeaning. In effect, they had to engage in what was an essentially futile bureaucratic process to prove their “innocence” in a situation where there was an “assumption that [they were] lying” about the paternity of their child.

I had to prove my innocence…it felt to me that, because we were splitting up, I was accused of being unfaithful and it just wasn’t the case. (Andrea)

There’s no doubt in my mind [that he’s the father] and I think he knows it as well… I know definitely that it’s [his]. I mean, if it’s not, it’s [an] immaculate conception, because you know, there’s just no way. (Trish)

Not all the women in this category underwent paternity testing for financial reasons. In fact, in the case of professional women, Child Support was not at issue. Rather, their need for testing was that the father should acknowledge his paternity and the associated emotional and social responsibility that it entailed. Women, despite the relationship breakdown, expressed a keen desire for the involvement of the father and a development of the father-child relationship which for them was about “everyday care, love, consistency and support”. The denial of paternity on the part of the father then was seen by them to be a way of “evading” parental responsibility when each wanted the father to play an active role in the child’s life.

How much do you want him to take responsibility anyway, I think, is the key question. In my case it was very much – I really wanted him to… I thought that, when he had incontrovertible evidence there, that it might enable him to
make a bond with the child and connect with the child, which is what I wanted. (Wendy)

Should access to testing be restricted?

The Australian Law Reform Commission (ALRC) and the Australian Health Ethics Committee’s (AHEC) Inquiry into the “Protection of Human Genetic Information” recommended, among other things, stricter regulation of paternity testing through compulsory laboratory accreditation (ALRC/AHEC 2003). This included the ethical requirement that both parents of a child give their written consent to testing, a recommendation that has been hotly contested by men’s rights activists and defended by women. However, whether we like it or not, commercial testing has already created a market and any attempts at banning the technology would be futile; it would simply mean that business would go offshore and accessibly would not change (Gilding 2004). Regulation of the industry would then become impossible and there would be no opportunity for the intervention of family and relationship counselling – something that appears to be urgently needed. But, important as regulation is in terms of ensuring adequate technical and ethical standards, the ALRC/AHEC recommendations largely miss the point: it is the human usage to which the technology is put that requires serious consideration. From the data, there appears to be no good reason to prevent anyone from having information about paternity where they genuinely do not know. It is what they do with the information based on the meaning that is given to knowledge about paternity or non-paternity that matters.

Issues for policy
In terms of policy, two suggested areas of concern are clearly evident. First, where non-paternity is uncovered we need to weigh up the rights of a father who has acted in every sense of the word to nurture, love and care for a child, against those of a biological father, whose contribution to fatherhood is merely. Further, the issue of “fatherless testing” in this context needs to be considered. In the face of this new technology, we need to rethink the abandonment in law of the “marital presumption” and the prioritising of biological non-parents in Family Law. Where the father-child bond has been established and a challenge by the mother reveals non-paternity, the father’s role and rights need to be legalised, formalised and elevated to at least that of an adoptive parent (Hirczy 1995). Such an approach challenges the current emphasis on biology as the primary, single marker of paternal responsibility. On the other hand, it undermines the well established principle of making men responsible for the outcomes of sexual actions. Where Child Support policy initiatives once had an effective solution for this, with the advent of the commercial paternity testing, such a policy option may no longer be tenable.

Child Support policy was developed in quite a specific socio-cultural and political context – following the sexual revolution and the introduction of no-fault divorce. It assumed a relatively uncomplicated paternal responsibility for extra-marital children among singles and for children of divorced couples. In the twenty-first century, relationships are more complex and typified by serial coupling and uncoupling and, at the same time, liberal approaches to sex has largely seen it de-linked from fertility and reproduction, and thus, arguably from paternal responsibility. In this altered context, policy initiatives need to provide innovative solutions to the issue of fatherless children. Perhaps too the definition of paternity in family law should be recast in
broader terms that extend beyond the current biological, material and financial formulation (Haney and March 2003).

The second area for policy focus is the need for protective measures to control vexatious claims of non-paternity from men who are already sure of their paternity. Underlying the experiences reported by women in this study is a serious social problem related to the lack of preparedness on the part of some men to accept responsibility for a child conceived within an established relationship. This practice is currently supported by the misuse of paternity testing technology that causes unnecessary victimisation of often first-time mothers and has cost implications in time and money for both the legal and the welfare systems.

Overall though, the focus on infidelity between couples and a gendered usage of the technology draws attention from the key relationship that paternity testing is designed to confirm or deny: the biological bond between a father and his child. Kaebnick (2004) argues that the motivation for testing, when associated with divorce proceedings, ‘is not genuinely to discover whether a parental relationship exists but to bring about an outcome that an adult wants, whatever the biological facts may be’ (2004:51). In his view, envisaging a child as the result of sexual betrayal is confounding ‘contests between adults’ with the fact of paternity (2004). A consequence of the current debates about paternity testing, as they focus on highly volatile emotional relationships between parents, is that the child becomes invisible except as the progeny of an adulterous liaison. If we are to invest in a view that takes aboard the best interest of the child, we need to move beyond a gendered debate that, whilst loudly declaring the interests of the child, actually ignores them. A focus away
from parental infidelity and acrimony between partners and towards the welfare of the child needs to be a key feature of the decision-making process at both a policy and individual level.

In conclusion, exposing the social and human networks within which paternity testing technology is embedded enables us to make a distinction between what the technology can tell us and what we do with that knowledge. Human beings are makers of meaning. It is at the level of interpreting the meaning of the test and what it reveals that we stand capable of making a change to how we use paternity testing technology in a way that does justice to children, as well as women and men. At a broader level though, we need to engage in open public debate about family policy, parenthood, identity and exactly how we want to use this technology and what meaning we want to affix to what it reveals.

References


Genetic Technologies ([2002]) What is DNA?


