

Procuring gametes for research and therapy: the argument for unisex altruism – a response to Donald Evans

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Abstract

There has been a troublesome anomaly in the UK between cash payment to men for sperm donation and the effective assumption that women will pay to donate eggs. Some commentators, including Donald Evans in this journal, have argued that the anomaly should be resolved by treating women on the same terms as men. But this argument ignores important difficulties about property in the body, particularly in relation to gametes. There are good reasons for thinking that the contract model and payment for gametes are both inappropriate, and that a model based on altruism should be applied to both sexes.

At present in the United Kingdom, men are usually paid for sperm donation, but women are not reimbursed in cash for giving eggs, although they are often offered treatment as payment in kind. This practice has grown up in contravention of the spirit, if not the letter, of the Human Fertilisation and Embryology Act of 1990. Although section 12 (e) of the act states that money or benefits should not be given to suppliers of gametes unless authorised by the Human Fertilisation and Embryology Authority, this seems to imply that payment will be the exception, at the discretion of the licensing body. The HFEA's annual report for 1993 indicated that payment would be withdrawn, but as of June 1995 many IVF clinics were still paying for sperm.

In discussions about changing this practice at a consultative workshop sponsored that month by the regulating agency, the Human Fertilisation and Embryology Authority, I – like Donald Evans – was struck by the assumption that men could only be motivated by payment, whereas women would willingly undergo the far more painful and risky procedures of super-ovulation and egg extraction for nothing.¹ This assumes either that men own their labour and the products of their bodies in a way that women do not, or that women's motivation is drastically different from men's, that it is not rational in the usual sense. Either way, the accepted narrative

about women's property in their bodies differs from men's story, and the prevailing narrative directly affects clinical practice.

Men can be dealt with by a recognisable contract, to sell a body *product* – a renewable one which does not raise quite the same horrific issues as sale of kidneys or other body *parts*. Women donors may not even be given reimbursement for expenses. They are effectively *paying* to donate their eggs, sometimes to private clinics that will profit from them – a very odd sort of contract indeed, if a contract at all. Yet eggs are a non-renewable resource, unlike sperm: the full quota of oocytes for life are already present in a baby girl's ovaries. And there is an overall shortage of egg donors, with very few women willing to return a second time.

The greater objective value of eggs and the higher costs to the donor contrast so starkly with present practice that some commentators – Donald Evans being one² – have been led to suggest that both sexes should be paid, and that women should in fact be paid more. This approach does tackle the incongruity head-on, incorporating women into the “normal” contract mode applied to men. But it assumes that women are being asked to act irrationally by the present system – rather than seeing both sexes as capable of being motivated by something other than conventional rationality, of being capable of behaving “arationally” (to coin a distinction like that between “immoral” and “amoral”).

And do we want to encourage both sexes to take on the male-model instrumental approach to the body – particularly in an era of the commodification of practically everything? Already we can see an increasing use of market terminology in the new reproductive technologies – for example, “*products of conception*” or “*egg harvesting*”. Evans's desire to substitute the term “*providers*” for “*donors*” is a milder form of the same syndrome, redolent of the purchaser-provider split in the NHS: “*provider*” clearly means “*seller*” in both contexts.

But are we in a position to sell our gametes? The debate about payment for gametes needs to look more critically at the notion of property in the body. It is generally (though wrongly) assumed that property in the body is a self-evident notion: whose body is it, if not my own?

Key words

Reproductive technologies; organ donation; tissue donation.

Yet even Locke, frequently considered the high priest of the notion, actually found property in the body an untenable concept. Because we do not create our bodies – only God does that, says Locke – we cannot be their owners. What liberal notions of autonomy rely on is property in the *person*, in identity and moral self-agency – not in the *body* as such.

Jeremy Waldron emphasises that Locke's well-worn assertion, "Every man has a Property in his own person", does *not* mean or require that we have property rights in our bodies. "Humans, then, do not have creators' rights over their bodies. But they can be regarded in this strong sense as the creators of their own actions (and *a fortiori* of their work and labour)."³

Waldron's analysis is borne out, I think, by the contrast that Locke draws between property in the person and property in goods.⁴ Property has a wide meaning in Locke, most commentators agree: not merely physical property, but "lives, liberties and estates".⁵ We know that life and liberty constitute one form of property in Locke, property in goods a second form. If property in the person is not the same as property in goods, then it must be equated with life and liberty. Although life is bodily, of course, property in life and liberty is more akin to property in one's designs, projects and innermost feelings than it is to property in things. Locke ratifies this distinction in his discussion of children's minority, when he assigns to parents the management of children's property: "By property I must be understood here, as in other places, to mean that property which men have in their persons as well as goods."⁴

Property in the body is something of a catchphrase, imported uncritically into the debate about sale of body parts. All body parts are actually about relationship with our *progenitors*, since we are not their creators – whether or not God is. But even if we did want to claim ownership of other body parts, we ought to think differently about gametes. Gametes, as germ cells, are also critically about relationship with *future* generations, and with our *present partners* – whether or not an individual gamete results in pregnancy. In a somewhat figurative but emotionally real sense, gametes *are not owned*. At most they might appear to be lent – although even that metaphor presupposes that someone did own them somewhere along the way.

Contract is therefore the wrong model to use in gamete provision, and since Evans's article was first published, there has indeed been increasing official preference for "unisex altruism" rather than the contract model he advocates. The HFEA has set up a working group to implement the recommendation in its 1996 report that payment and benefits in kind should be removed for both sexes. A call for egg donors received national publicity in early 1997. Relationship is already predominant in some clinics' approaches, insofar as they often rely on recruiting donors through infertile couples, who are told that if

someone donates eggs for them, they will go to the top of the waiting list. (This practice is impossible without the purchaser-provider split of the National Health Service, but is used at some private clinics.) Where known oocyte donors are accepted, however, sperm donation is kept anonymous. In this sense, relationship is discouraged, on the assumption that men will refuse to donate if it puts them at risk of paternity suits or letters from the Child Support Agency.

Gametes are also about relationship with one's partner, of course. One gynaecologist has claimed that infertile *wives* feel most proprietorial about their husbands' sperm, and that they would never accept free donation by their husbands to the infertile husbands of fertile women. This emotional sense of ownership may be understandable, but it is difficult to see why these wives should feel that payment of £15 per donation overcomes their objections.

Lewis Hyde has suggested that exchange is construed as a masculine realm in our society; gift – the stuff of nursing, teaching, social work – is female. The products of female labour are not considered genuine commodities, Hyde argues, and therefore not deemed suitable for sale at the full price of their exchange value in a market system.⁶ Certainly the exchange value of women's labour in the domestic mode of production is not fully compensated, Christine Delphy argues.⁷

Those who oppose payment for gamete or organ donation do often look for inspiration to a story about gifts: archetypally since Richard Titmuss's book, to blood donation.⁸ True, the NHS Blood Transfusion Service has been undercut by the closure of major collection centres, the sale of plasma and other products from donated blood to private hospitals, and difficulties over haemophilia and testing for HIV. But the fundamentals of the system in this country remain donation rather than commercial payment, and public support is still quite high. It would be consistent to extend the same model to gamete donation, for both sexes.

Unisex altruism would treat both sexes equally, but how would it affect the shortage of gametes? It is often said that men will only donate if they are paid and indeed the majority of donors in the UK are young single students who are mainly motivated by payment.⁹ But to argue that it cannot be otherwise is a form of the naturalistic fallacy. If feminism has learned anything at all about the social construction of gender, it is that motivations can be *produced* by gendering; the system does not just passively reflect gender differences, but actively perpetuates them. Experience from other countries, particularly Sweden, suggests that an initial drop in sperm donations under an altruistic system for both sexes is reversed over time.¹⁰ France has run a system of unpaid sperm donation for over twenty years, actually achieving a higher rate of donor insemination cycles than the UK.¹¹ Men *can* accept a new

regime, a new narrative, about property in the body; why not write one?

But what about oocyte donation? Even if women's expenses were always covered, so that they were never effectively paying to donate, are we resigning ourselves to continuing the current shortage of eggs if we do not adopt payment or tariffs for egg donors? I think we ought to consider the possibility that "bad motives drive out good", to reformulate Gresham's Law. (If "bad" is too strong a term, we could substitute Evans's own admission that providing gametes for pay is less admirable than donating them.)¹² *When a system incorporates both paying and non-paying elements, the altruistic element will suffer. Conversely, a system that sticks to its altruistic guns often attracts high levels of public support.*

As Titmuss described the American blood donation system, a preponderance of paid blood donation combines with a small quantity of voluntary donation. The voluntary system was never anything like as popular as unpaid blood donation remains in the UK, because the mixed mode encourages cynicism: why give when others are profiting? (We can see a similar phenomenon in the increasing number of people who will not donate to the NHS blood collection centres because they fear that their blood or blood products will be sold to private hospitals.) The mixed market-voluntary mode also produced high rates of contamination of blood products, since it was primarily those who *had* to sell – drug addicts, predominantly – who sold. Market incentives have obvious class implications as well: empirical studies of contract motherhood demonstrate that paid surrogates are of a lower class than the men who hire them, viewing contract motherhood as the only "job" for which they can qualify.¹³ Although sperm donation does not have any such obvious class bias, the greater risks and suffering involved in oocyte donation tip the scales towards the probability that only low-paid or unpaid women would be tempted by paid egg donation. But conversely, that very pain and suffering makes the altruistic act all the more worthy and appealing.

The 1990 act was right to set up a voluntary system of gamete donation. Practice has slipped from that ideal as the market element has crept in for sperm "donation", because it is patronisingly assumed that men will only respond to financial considerations. Rather than colluding in that decline, we should restore the original altruistic spirit of the act – consistently with the current legal position on surrogate motherhood, which is also valid only so long as cash does not enter the nexus.

I do have one doubt about generalising the women's story to the men's: it reinforces stereotypes about women's natural altruism – although it challenges the gendering of those stereotypes by asking men to emulate women. But surely what is

wrong with the current gendering of altruism is not that it is about altruism but that it is about gender. All in all, I think we should discourage – for both sexes – the instrumental approach embodied in "freedom to contract" the stuff of one's body.

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References and notes

- 1 Evans D. Guest editorial: Procuring gametes for research and therapy. *Journal of Medical Ethics* 1995; 21: 261–4. This article starts from the situation which actually prevailed in June 1995, when Donald Evans was writing, for the purposes of correct comparison with his argument. In January 1996, the HFEA issued directions (D1996/1) allowing donors of either sex to be given either money (not exceeding £15) and expenses, or benefits, for supply of gametes. My thanks to Bea Heales of the HFEA for clarifying the current position and for noting that a further consultative meeting was held in December 1996 to discuss implementation of the authority's decision not to pay either sex for donating gametes. A timetable for implementation has still to be agreed, but a decision on the mode of implementation is expected in 1997 (personal communication 20 January 1997).
- 2 See also Lockwood G. *Donating life: the practical and ethical problems of gamete donation*. Paper presented at the Oxford-Mt Sinai conference, Oriel College, Oxford, 1996 March 30.
- 3 Waldron J. *The right to private property*. Cambridge: Cambridge University Press, 1988: 179.
- 4 Locke J. The second treatise on government [sn 173]. In Laslette P, ed. *Two treatises of government*. Cambridge: Cambridge University Press, 1979.
- 5 See reference 4: sn 123.
- 6 Hyde L. *The gift: imagination and the erotic life of property*. New York: Random House, 1979: 101 ff.
- 7 Delphy C. *Close to home: a materialist analysis of women's oppression*. London: Hutchinson, 1984.
- 8 Titmuss R. *The gift relationship: from human blood to social policy*. London: Allen and Unwin, 1971.
- 9 Cook R, Golombok S. A survey of semen donation: phase II – the view of the donors'. *Human Reproduction* 1995; 10: 4.
- 10 Cooke I. *Practical considerations and implications of paying gamete providers*. Paper given at HFEA Day Conference on Payment for Donors, St Anne's College, Oxford 1995 June 1.
- 11 Shenfield F, Steele SJ. Why gamete donors should not be paid. *Human Reproduction* 1995; 10, 2: 253.
- 12 Evans D. Guest editorial: procuring gametes for research and therapy. *Journal of Medical Ethics* 1995; 21: 261–4, at 264.
- 13 Overall C. *Human reproduction: principles, practices, policies*. Toronto: Oxford University Press, 1993: 128. See also Anderson E. Is women's labor a commodity? *Philosophy and Public Affairs* 1990; 19: 71–92.