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Purloined Sperm, Victim-Blaming, and Procreative Asymmetry: A Critique of Christine Overall's Analysis of Prospective Parent Disagreement

by

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B.A. Philosophy, Greenville College, 2012

A Thesis

Submitted to the Graduate School at the

University of Missouri – St. Louis

In Partial Fulfillment of the Requirements for the Degree

Master of Arts

in

Philosophy

April, 2014

Advisory Committee

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Abstract

Prospective Parent Disagreement is an important issue in bioethics that has been upstaged by the related debate on abortion. Of the few pieces of literature that focus directly on this topic, perhaps none is better known than Christine Overall's controversial book *Why Have Children?: The Ethical Debate*. In the third chapter, Overall discusses both manifestations of prospective parent disagreement, and she makes an argument that fathers should always be held financially responsible for the child their sperm creates, even in the case where the father does not want the baby. She justifies this claim by suggesting that the procreative asymmetry inherent in prospective parent disagreement is justified by the asymmetry displayed by each parent's workload during pregnancy. She further claims that this dynamic holds true even in cases of deceit and purloined sperm, because the child's interests always trump the financial interests of the father. This paper disputes Overall's analysis of prospective parent disagreement by contending that her argument relies upon victim-blaming and misconceived notions of future asymmetries to succeed. Firstly, I argue that Overall's argument for the purloined sperm case relies on an unfeasible, excessively cynical worldview and the psychological fallacy of victim-blaming to succeed. Secondly, I convey how the inseminator did act responsibly in the purloined sperm case and why this invalidates any potential financial responsibility he might have towards the resulting child. Furthermore, I draw an analogy between the inseminator of the purloined sperm case and traditional sperm donors, and I argue that there is no morally relevant distinction between the two subjects if the child's interests and well-being always trump the financial interests of the father. Finally, I argue that Overall mistakes a future, potential asymmetry in the procreative workload as justification for the procreative asymmetry inherent in prospective parent disagreement, and I offer a possible solution to quell this procreative asymmetry while respecting the procreative, bodily, and genetic rights of both the gestator and inseminator.

Keywords: prospective parent disagreement, purloined sperm, victim-blaming, father's rights, procreative asymmetry, autonomy, genetic rights

Introduction

In her book *Why Have Children?: The Ethical Debate*, Christine Overall dedicates a chapter to discussing problems of prospective parent disagreement. In this chapter, she analyzes two separate disagreements that occur between prospective parents: when the gestator wants the baby and the inseminator does not, and when the inseminator

wants the baby and the gestator does not.¹ In analysis of the former disagreement, Overall suggests that the inseminator is always *at least* financially responsible for the resulting child, even when the inseminator *insists* upon an abortion. Overall maintains this position by arguing for two claims: 1) the procreative asymmetry inherent in prospective parent disagreement is justified due to the asymmetry displayed in the procreative workload of the gestator and inseminator during pregnancy, and 2) the child's interests and well-being always trump the father's interest, specifically financial interests, in not being a parent (Overall 2012: 40-2). The first claim allows the gestator to deny the inseminator's wish for an abortion, and the second claim insures that the inseminator is financially responsible for the child after birth.

Overall even goes as far as stating that this dynamic still holds in cases of gestator deceit and "purloined sperm," the situation where the gestator steals the inseminator's sperm, unbeknownst to him, and impregnates herself. Combined with the first two claims, she argues for a third, stronger claim: 3) in cases of deceit and purloined sperm, it is the inseminator's own negligence and lack of responsibility that makes the pregnancy possible, so the gestator's deceit does not let the inseminator "off the hook" from his financial responsibilities for the impending child (Overall 2012: 46-7).

In this paper, I argue that Overall's claims are unfounded, and, with these claims nullified, there is no justifying reason to override the inseminator's procreative autonomy, financial interests, and genetic rights in this manifestation of prospective parent disagreement. The paper commences with the purloined sperm case, because the

¹ Throughout the paper I shall refer to the prospective parents as the gestator and inseminator. Overall uses these terms because the labels "mother" and "father" tend to beg the question, so I will also stick with the labels she prefers (Overall 2012: 35).

arguments brought against Overall's third claim set up the argument for cases of non-deceitful prospective parent disagreement nicely. Firstly, I attack the third claim as a case of unrealistic expectations, and I describe how it is more akin to an excessive cynicism than responsible, risk-averse behavior. Secondly, I argue that Overall shifts her emphasis from the child's interests and well-being to punishing and blaming the inseminator for his *alleged* irresponsibility. This is the psychological fallacy of blaming the victim, and it is unwarranted, which dissolves the purloined sperm case.² Next, I argue that Overall's second claim also applies equally to sperm donation, and acceptance of this claim would challenge some common-sense notions of a sperm donor's responsibility. Finally, I analyze the problem of procreative asymmetry and describe how Overall's defense of the asymmetry depends upon a misconceived notion of a *future* asymmetry in the procreative workload.

The Purloined Sperm Case: Excessive Cynicism

The purloined sperm case is a staple in the miniscule literature that is prospective parent disagreement, because it vividly describes the asymmetry inherent in our current understanding of the rights of the gestator versus the rights of the inseminator. These types of situations are also starting to become actualized in the real world too with the emergence of sperm banks and advanced barrier methods of contraception. In fact, in 2000 an Illinois Appellate Court actually presided over a case of purloined sperm. It was

² This logical terminology is justified here, because victim-blaming is commonly referred to as a psychological fallacy of the just-world hypothesis. For example, Richard Double states it as such, "Psychologists and common sense recognize blaming the victim as a cognitive error (fallacy) that many of us use to support the just-world hypothesis — the view that life is basically fair" (Double 2005: 21).

found that Dr. Sharon Irons artificially inseminated herself with Dr. Richard Phillips' sperm that was attained through oral sex with a condom. Irons, who was married to another man at the time, began a sexual relationship with Phillips in 1999. The two never engaged in sexual intercourse, but Irons did perform oral sex with a male condom on Phillips on three different occasions. Without Phillips consenting, Irons promptly used the sperm within the condom to artificially inseminate herself and become pregnant (Turley 2011).³

In discussing the purloined sperm case in general, Overall first condemns the woman for deceiving the man. She rightly judges the action as wrong, and explicitly states that the woman has no right to deceive him. However, she suggests that the trickery played on the inseminator is not the most relevant fact here in determining what to do in cases of disagreement. Rather, she argues that the child's interests and well-being, in conjunction with the inseminator's gamete negligence, trump the deceit used by the mother. She states:

...absolving the inseminator of any parental responsibilities if he does not want them, simply means that the child pays for the gestator's deception. The infant had no involvement in or choice about coming into existence. It is also not in the baby's interests for the inseminator to be absolved of all moral and economic responsibility resulting from sexual activity in which the inseminator chose to participate. I suggest that the child's interests in being well supported and cared

³ After being notified eighteen months later through a petition to determine paternity, Phillips sued Irons on the grounds of emotional distress and conversion of property. The Illinois Appellate Court denied the conversion of property suit claiming, "...that when the plaintiff 'delivered' his sperm, it was a gift – an absolute and irrevocable transfer of title to property from a donor to a donee. There was no agreement that the original deposit would be returned upon request" (*Phillips v. Irons* 2005). The court did allow the emotional distress suit to continue forward, though it was eventually ruled out, and the judges did state that Irons "deceitfully engaged in sexual acts, which no reasonable person would expect could result in pregnancy, to use plaintiff's sperm in an unorthodox, unanticipated manner yielding extreme consequences." However, even though the court ruled that the purloining of sperm was deceitful and unable to be anticipated, Phillips was still ordered to pay \$800 a month in child support for his child conceived by deception (Turley 2011).

for must trump the inseminator's interests in not being a parent (Overall 2012: 42).

Overall claims that the deception used to engender the child should not be something that is held against the child. She shouldn't have to suffer due to a vicious act of the gestator and the inseminator's interest in not being a parent. This at least seems plausible.

Though deception was used, it seems intuitive that we have the duty to protect innocents, especially babies and infants, from avoidable suffering and misfortune, and it could easily be argued that the inseminator's unwillingness to be financially responsible for the child would cause avoidable, unneeded suffering and misfortune.

If the argument had ended there, her claims would not seem so radical. However, after classifying some outliers that would not be morally and financially responsible in this case, such as pubescent boys and the mentally impaired, she makes the claim that financial responsibility derives from this man knowing that a child might result from the oral sex. She says:

Rather, the claim is that when consent is knowledgeable and unconstrained, unimpaired adult men do in fact know that a *child might result* from their sexual activity, and therefore they *ought* to be held responsible for its consequences (Overall 2012: 44-5).

A couple sentences later she explicitly states that "...the fact that a man does not anticipate a pregnancy as a result of oral sex is not a defense" (Overall 2012: 45). She makes these claims due to her belief that men need to act more prudently with their gametes than they currently do, because, according to Overall, women *must* take much more responsibility for their gametes than men, due primarily to their biological position in procreation. She suggests that men must have a greater responsibility for their gametes than they presently do, and she even goes as far as saying men should be more

responsible for their gametes than their other bodily parts and fluids, e.g. urine, feces, blood, etc. For her, men just do not worry about the risks and realities of sexual activity; whereas, women, housing the sexual organs that develop the fetus, must always be aware of these risks.

These are some fairly strong claims against men's lack of responsibility for their gametes. Though she may be right that men may have *a propensity* to be more careless with their gametes than women, she makes several assumptions that aren't warranted. First, her assumption that women are "aware of the risks and realities that are always attendant upon even consensual sexual behaviors..." is mistaken (Overall 2012: 46). When she speaks of risks and realities in this context, she only means unwanted pregnancy, as opposed to sexually transmitted infections and things of that nature. However, natural pregnancies only happen through sexual intercourse, so there are a plethora of ways to behave sexually without the risks and realities of unwanted pregnancies.

Second, this objection is also strengthened by her insistence that a man *can* anticipate a possible pregnancy from oral sex. It's reasonable to ask how this might be possible, though. How can a man logically and accurately anticipate the possibility of a pregnancy from oral sex when, barring some freak event, it is impossible to get pregnant through oral sex? For many couples, oral sex is a type of birth control. Planned Parenthood, a respected, nonprofit organization dedicated to sexual education and the combat against unwanted pregnancies, even labels oral sex as a type of "outercourse" birth control (Cullins 2014). It is not the safest type of birth control due to the possibility

of contracting sexually transmitted infections; however, it still is *100 percent effective* at preventing pregnancy.

Some may object that the deceit used in the purloined sperm case proves that oral sex is not 100 percent effective at preventing pregnancy. Granting this, though, one can use this same type of reasoning to come to the conclusion that abstinence and celibacy are also not 100 percent effective in their aims. Abstinence is advertised to be 100 percent effective at preventing pregnancy, but abstinence doesn't forbid masturbation. If someone secretly collects sperm after masturbation and impregnates herself with it, then, under the same reasoning used above, abstinence is not 100 percent effective. Celibacy, which forbids masturbation, must be the only 100 percent effective way to prevent pregnancy then. However, it is possible for someone to use a syringe to extract sperm from an individual in a deep sleep – a sleep that is either natural or induced by the thief – and proceed to impregnate a woman with it.⁴ To use a more common example, if a man has a nocturnal emission, colloquially known as a “wet dream,” a woman can harvest the semen and impregnate herself with it through this avenue as well. By the reasoning above, then, celibacy would also not be 100 percent effective at preventing pregnancy, which is obviously false. Farfetched as these examples might be, it shows the ludicrous nature of this objection. From this I contend that oral sex *is* 100 percent effective at preventing pregnancy, and no rational person would anticipate a pregnancy from it.

It also should be noted that the Illinois Appellate Court even supported this claim in *Phillips v. Irons*. Though they didn't believe it was conversion of property, their

⁴ There is actually a name for this procedure called Percutaneous Epididymal Sperm Aspiration or PESA. It involves “inserting a needle attached to a syringe into the epididymis, then gently withdrawing fluid” (Urology Care Foundation 2011). Obviously, the person would need to know what they are doing; however, this positively shows that this is a genuine biological occurrence that could be performed.

sentiment supported the claim that the inseminator could not rationally anticipate a pregnancy through the means of oral sex. Talking about the purloined sperm case directly, the judges claimed that the defendant “deceitfully engaged in sexual acts, which no reasonable person would expect could result in pregnancy, to use plaintiff’s sperm in an unorthodox, unanticipated manner yielding extreme consequences” (Turley 2011).

I can only think of two normal ways that one might anticipate a pregnancy from oral sex: 1) you lack sexual education and are consequently ignorant about the biology of sex and reproduction and think oral sex can impregnate someone, or 2) you are excessively cynical.⁵ The first way is granted immunity through Overall’s clause above, because people in this group would most likely be young boys or the mentally impaired. The second way, though, is plausible. One can imagine a man so cynical and distrustful of human sincerity that he could anticipate a pregnancy occurring from oral sex, and I’m sure there are real, concrete examples in the world that exemplify this. However, in many other social areas of life, being this excessively cynical would have to be a great hindrance to efficiency, prosperity, and happiness. If one is this cynical in a situation like this, where you at least know enough about someone to let them perform oral sex on you, then interactions with *complete* strangers must be exponentially worse.

For example, imagine that it is tax time, and the excessive cynic is in the market for a new accountant. As awful and stressful as tax time is already, it would have to be

⁵ This, of course, is talking about an “Average Joe” type of character. Obviously, wealthy men and men with specimens at sperm banks, specifically those with acquaintances who might have access to the specimens, will have a greater need to be on the lookout for this type of scandalous behavior, because there will likely be more attempts to steal sperm from these types of people due to their affluence and ease of theft from the sperm bank. When it comes to this type of situation, a cynical attitude may be a virtue rather than a vice. However, since the purloined sperm case does not explicitly stipulate the man as wealthy, famous, or having specimens stored at a sperm bank, I’m going to assume he’s an average person with no incentive to be on the lookout for these things.

much worse dealing with this stressful time as an excessively cynical person. Since he has a new accountant handling all of his private information, the excessive cynic would probably be distraught with anxiety knowing that at any minute his identity could be stolen by an untrustworthy person who is only motivated by his own interests. This type of excessive cynicism can be extrapolated to many other social situations with similar results, too, which points to the fact that this is not a feasible or productive way to live one's life. Furthermore, if, as Overall wishes, every man were able to be anticipatory and "responsible" in this manner, then, consequently, every man would have to be this excessively cynical. I'm not sure that this would be a productive, efficacious type of society. Whether this is compelling or not, the burden of proof is on Overall, because her claim questions both our intuitions on oral sex and our current understanding of human reproduction. From my point of view, her defense of this controversial claim is not acceptable and needs further justification for validity.⁶

One relevant objection that might be raised at this point is that my analysis provides no clear line between extreme cynicism and responsible, risk-averse behavior. Perhaps being weary of purloined sperm is simply responsible behavior rather than excessive cynicism. Objections that deal with subjective concepts or definitions always have some sort of strength, because it's hard to know where "the line" is when so many

⁶ One might argue here that there is a stark difference between what is required by excessive cynicism in my example and Overall's example. In my example, excessive cynicism leads to lack of proper functioning, and in Overall's example it just leads to disposal of a condom. This is true, but any objection based on this fact is due to a misconception of my argument. In order for the man to anticipate a possible pregnancy from oral sex and thwart the purloining of the sperm himself, he must be that excessively cynical in the first place. Therefore, the emphasis shouldn't be on the differing results of excessive cynicism between the two examples, because the examples are just two different scenarios in the life of the excessive cynic. Rather, the emphasis should focus on the fact that the man who does anticipate pregnancy from oral sex must be excessively cynical, which entails that he will also deal with the anxieties of social situations that I labeled in my example. The objection is baseless.

people define these terms differently. Responsible, risk-averse behavior can mean wearing a seatbelt to one person and purely being sober while driving to another! However, since I've established that oral sex is 100 percent effective at preventing pregnancy, we are dealing with a certainty rather than a probability, and that should make this objection a little easier to quell.

I must admit that in responding to this objection I will make an assumption regarding the inseminator and gestator on the night of the purloined sperm. I am going to assume that they were performing oral sex over intercourse as a method of birth control. This is a fairly intuitive assumption, because if they were planning on having intercourse in addition to oral sex, there would be no need to steal the sperm from oral sex. Much easier ways of impregnating oneself without the man's knowledge could have been performed if they were to have intercourse in addition to oral sex, e.g. lying about taking hormonal birth control, tampering with the condom, etc.

Though I do not think it is absolutely necessary to make this assumption, it strengthens my argument and makes it clearer when everything is finished. Whether or not they were using oral sex as a method of birth control, it has already been established that the inseminator knew oral sex wouldn't render the gestator pregnant, because, as argued above, oral sex is 100 percent effective in preventing natural pregnancy. Therefore, the inseminator was acting responsibly and averting risk by not risking pregnancy through intercourse. Not only is he being responsible with regard to an unwanted pregnancy, he's also highly reducing his chances of catching a sexually transmitted infection from the gestator. This is being responsible.

Overall states, “No contraception is foolproof, and sexual activity, even nonstandard sexual activity [read oral sex], can result in pregnancy” (Overall 2012: 45). This isn’t right, though. I’ve already established that oral sex is effective at preventing pregnancy, so if the inseminator knows that oral sex is 100 percent effective at preventing pregnancy, then there is no need for him to take further precaution in preventing pregnancy. Once something is 100 percent complete, it doesn’t make any sense to try to go above and beyond 100 percent complete, because, in most cases, there is no beyond. His aim is satisfied, and to try and take anymore precaution would be paranoid and irrational – it’d be excessively cynical. An analogous counterexample will help here.

Imagine that you are supposed to be the designated driver for your friends tonight on New Year’s Eve, and you know that hoards of police officers will be patrolling the roads. You want to be responsible and avoid a DUI, so you choose not to drink any alcohol at all. This is responsible, risk-averse behavior. However, later on in the night, you decide you don’t even want to risk driving sober at all, because you fear some police officer will be deceitful and claim that you were intoxicated when you really weren’t. Though not drinking alcohol is *100 percent effective* against receiving a DUI, fear of deceit from other authority figures and distrust of others drives you to act this way. This is irrational, and it is analogous to the purloined sperm case. You act responsibly by your first actions of oral sex and not drinking; you are paranoid, irrational, and excessively cynical when you go further than that. This shows that in a lot of cases there is a discernable line between being responsible and being excessively cynical, and to submit to Overall’s suggestion in the case of the purloined sperm would be to put yourself on the latter side of the two.

On a final note, the substantial scarcity of these types of cases also lends support to my argument. In the past half-decade, only a handful of purloined sperm cases have been brought to court, and out of this handful virtually every case was alleged rather than confirmed. This suggests that the degree of responsibility for a potential occurrence should be weighed by the actual probability of that thing happening. For the scenario we are dealing with, the degree of responsibility a man has for his gametes is correlated with the probability of them being purloined, which is extremely low. On the contrary, if we were talking about leaving one million dollars in cash or one hundred pounds of gold out on the street unattended, the probability of them being stolen is extremely high. Therefore, the low degree of responsibility that men should have towards the purloining of sperm suggests that anticipating such an event is virtually impossible. If there is a low degree of responsibility for an event of purloined sperm and anticipating it is virtually impossible, it follows that men should not be held responsible in cases of purloined sperm.

The Purloined Sperm Case: Blaming the Victim

While Overall's aforementioned claims and assumptions are surely false, the main flaw in the argument is her shift from the wellbeing of the child to the inseminator "paying the price" for his actions. She explicitly makes this shift in two different places. The first, stronger quote comes when she's discussing the similarities between the purloined sperm case and the hypothetical lab cases. She states, "...and they [the inseminators] are responsible for their own *negligence* [emphasis added]" (Overall 2012: 46). The second quote comes in several subsections:

Because of women's role in gestation...it makes sense not to allow men *off the hook* [emphasis added] when it comes to supporting the children they father...for, as a general practice, *it is important not to give the message to men that they are not responsible for the consequences of their voluntary sexual behavior* [emphasis added] (Overall 2012: 47).

These quotes highlight her shift from the priority being solely the wellbeing of the child to a derogatory insistence that the inseminator be responsible for the "consequences" of his "negligence." As shown above, being able to anticipate a pregnancy from something other than intercourse requires an excessive cynicism, which was shown to be impractical, irrational, and hardly feasible. Therefore, since I denied her anticipatory claim, and she can't provide a satisfactory one, the inseminator did not make an autonomous, free choice to perform *pregnancy-risking behavior*,⁷ and her labeling of "negligent" and "off the hook," which also implies some sort of negligence, is not warranted.

For the sake of thoroughness, though, Overall could still argue that the inseminator was reckless and negligent with his sperm, even though he couldn't rationally anticipate pregnancy from oral sex. However, since it wasn't a *pregnancy-risking behavior* and there was no reason to suspect pregnancy from this, this argument lacks any type of strength. This is analogous to claiming that the Schnucks customers in 2012 who had their credit cards hacked by internet hackers were acting negligently. They used their cards correctly in a *non-fraud-risking* way⁸, so one wouldn't say that they

⁷ As a minor note, pregnancy-risking behavior is opposed to the free choice of sexual behavior that Overall talks about. The inseminator still chooses to act sexually with the woman; however, since I denied the anticipatory claim, where the inseminator could anticipate a pregnancy from oral sex, the two come apart and are separate concepts.

⁸ A smaller-chain of grocery stores is about as safe of a place to use a credit card as you can find. I contrast it with fraud-risking behavior, such as randomly putting your credit card and social security number online.

were acting negligently. They were merely products of deceit, just like the inseminator. This objection is also analogous to saying that though a girl is not to blame for being raped, she is to blame for being irresponsible in wearing a “provocative” top in a bad neighborhood, which is preposterous.

Since labeling the inseminator as negligent is unwarranted, this entails that the inseminator was nothing more than the victim of deceit. This means that Overall’s argument now relies on victim-blaming to succeed. The psychological fallacy known as blaming the victim, or victim-blaming, is defined as an instance, “...when the victim of a crime or abuse is held partly or entirely responsible for the actions committed against them. In other words, the victims are held accountable for the maltreatment they have been subjected to” (Schoellkopf 2012: 2). By holding the victims of deceit, the inseminators, partly responsible for the pregnancy due to their *alleged*, but unfounded, negligence, Overall is, by definition, victim-blaming.

An expert in victim-blaming, Julia Schoellkopf explores some of the main reasons victim-blaming occurs. She states, “The main motivation for people to victim-blame is to justify abuse or social injustice” (Schoellkopf 2012: 2). Though Overall does explicitly state that she does not condone the deceit the gestator used to obtain the sperm, it does seem that her victim-blaming is related to an attempt to justify the deceit and consequent pregnancy, even though she tries to disguise this fact with the emphasis on the child’s welfare.

Other reasons that some tend to victim-blame are due to faulty background assumptions, ideologies, and attributions. There are two other substantial reasons that some people victim-blame: the belief in a just world or errors in attribution. The just

world hypothesis claims that the world is ultimately a just place. Good people always get what they deserve, and bad people also get what they deserve. This hypothesis holds that all of the social structures and systems are fair and just, especially to the subject who holds this herself. People who victim-blame tend to hold this belief subconsciously, perhaps as a hope or aspiration, because one can empirically verify that the world is not always a just place. In fact, many cases of victim-blaming are implicit in this same sense, and the subject does not necessarily understand that she is victim-blaming by her emphasis on the victim of the crime (Kay, Jost, & Young 2005: 240-46).

When the subject sees a crime, then, she doesn't see a victim who was taken advantage of by a perpetrator of the law. Rather, she sees a person who couldn't possibly be wronged in such a malicious way, because the world is ultimately a just place. The blame is then placed on the victim herself, and a lack of personal responsibility or flaw in character is usually pointed to as the catalyst for the incident. This is a very naive perspective of the world, but it is one of the main reasons that some people victim-blame.

Others have different motivations to victim-blame. Rather than believe in a just world, other cases of victim-blaming are the result of an error in attribution. In this sense, there are two types of attributions one can make about situations of crime: internal and external. Internal attributions refer to when a situation is judged as a result of the contents of the victim's character; whereas, external attributions refer to when a situation is judged as a result of the circumstances and environment surrounding the people involved (Heider 1958). Victim-blaming occurs when people overvalue internal attributes over more relevant external attributes, and they target the victim's character and choices as the object of blame over the actual circumstances of the crime itself.

In Overall's case, it could plausibly be argued that she implicitly holds this just world hypothesis, but it is very apparent that her argument is the result of an error in attribution. In the purloined sperm case, she makes an internal attribution error when she blames the inseminator of negligence, and she devalues the overall circumstances and environment of the case, i.e. the deceit employed by the gestator. Therefore, since victim-blaming is widely known as fallacious and Overall's argument rests on this fallacy through an internal attribution error, we can conclude that Overall's argument in the case of the purloined sperm is unsound and is merely a case of victim-blaming.⁹

One possible objection that could be brought against this argument is that the sperm is a gift for the gestator. This is the sentiment that the Illinois Appellate Court, wrongly, expressed in *Phillips v. Irons*. They claimed "...that when the plaintiff 'delivered' his sperm, it was a gift – an absolute and irrevocable transfer of title to property from a donor to a donee. There was no agreement that the original deposit would be returned upon request" (*Phillips v. Irons* 2005). If the sperm is a gift, then the sperm would no longer be property of the inseminator, and, after ejaculation, the sperm would be the property of the gestator. This objection is hardly compelling, though. The case is of the *purloined* sperm, so it's not apparent how stealing something could be construed as tacit gift-giving. Gift giving is a purposeful, conscious measure that one completes with a purpose and end in mind, which is generally the enjoyment of the gift by the receiver.

⁹ This argument might also be applicable towards other cases of deceit that result in unwanted pregnancy, e.g. time of ovulation cycle, promise to use emergency contraception, deception about taking hormonal birth control, etc. Though being fairly analogous to the purloined sperm case, they are somewhat more difficult to argue for due to the fact that actual *unprotected* sexual intercourse did occur. With the purloined sperm case, there should have been a 0 percent chance for pregnancy, so oral sex is a major factor for my argument. However, I do not think this fact defeats this type of argument for those other cases of deceit, and I think it will only need a fairly different approach to succeed.

If the gestator stole the sperm unbeknownst to the inseminator, then it is not within the concept of gift-giving. Suppose a friend is giving me a ride to the gas station, and, unbeknownst to him, I steal his car when he goes inside. Calling this *purloined* car a gift from my friend is mistaking the concept of gift-giving. The pure semantics of the title “the case of the purloined sperm” ensure that the sperm is not a gift.

A similar objection can be made by the transfer of property rights of the sperm. Objectors claim that upon ejaculation and disposal of the used condom to the gestator, the property rights of the sperm were transferred from the inseminator to the gestator. This objection is also highly dubious, because it seems to make mundane, everyday tasks property rights transfers. For example, if property rights were this easily transferred without consent (not even tacit consent!), then restaurant servers and valets could potentially own thousands of credit cards and automobiles due to the reliance on property rights transfers in their places of employment.

Another, more biologically relevant example would be cases such as the movie *Gattaca*. In the movie *Gattaca*, a future society places a premium on superior genetic code that can be cloned and manipulated before birth. Imagine that I’m shaking a stranger’s hand, and the handshake left some of the stranger’s DNA on my hand, i.e. sweat, skin cells, saliva, hair, etc. Would I be justified in making a clone of that stranger from her DNA? If the objector’s sense of property rights transfers is sound, then, yes, I would be justified, because by shaking my hand and leaving her DNA the stranger transferred her property rights of her particular DNA to me. It may be objected that the stranger did not make an autonomous choice in this interaction to leave her DNA, but there is no real distinguishable difference between the actions of the stranger in this

example and the actions of the inseminator in the purloined sperm case. It is common knowledge that you leave traces of DNA almost everywhere you go and on everything you touch, so ignorance cannot be an excuse here. The fact is, they were both products of thievery and deceit, and property rights, and gifts, aren't *truly* transferred to different ownership without voluntary knowledge *and* consent.

Claim Two: Child's Interests and Sperm Donators

Though Overall's third claim and argument for the purloined sperm case were shown to be fallacious, her first two claims still stand. In particular, one could cite the second claim - the child's interests and well-being always trump the father's interest in not being a parent - as a good enough reason to proceed with Overall's argument.

Though her irresponsibility and victim-blaming arguments are mistaken, it may be argued that the innocent child should take precedence over the inseminator's financial interests, and he should still be financially liable for the child.

The problem with this sentiment is its one-sided emphasis of justice. It isn't justice to punish one innocent person for the sake of another, and the child's interests shouldn't supersede the interests of the father due solely to the child's youth. The child's welfare was only relevant when it was combined with the inseminator's gamete irresponsibility, which contributed greatly to the pregnancy. Since my argument showed that the inseminator was not negligent or irresponsible with his gametes, the claim loses strength. Rather than pitting an innocent child against a negligent inseminator, Overall's claim pits two innocent individuals against each other, and she claims that the child's interests trump those of the inseminator's in virtue of the child's youth and need to be

cared for. This doesn't logically follow without the inseminator's supposed gamete irresponsibility.

An analogous counterexample might help to further draw out the problem with this claim. Suppose there is a single mother with a young child. She was just fired from her job, and she has no way to support the welfare of her child. Suppose she is computer savvy and has the ability to hack into a male friend's Paypal account to wire some money from his account to her account. She decides to hack into his account and acquire the money, but she is caught during the money transfer. If, as this claim contends, the child's welfare is of the greatest importance, the male friend should be obligated to let her keep the money for the child's welfare. This is obviously false, because an innocent person should not be obligated to care for his friend's child that is in need. This is a supererogatory moral act – an act that is viewed as noble and saintly but not morally required. This case is similar to the purloined sperm case, so financial responsibility of a bastard child from a case of purloined sperm should also be considered a supererogatory act rather than obligatory act.

Obviously, there is one main difference between these examples. In the purloined sperm case it is the biological father who is financially responsible for the child; whereas, in the Paypal case it is merely a male friend who is being held financially responsible. This might be a relevant difference, because it does seem intuitive that we are more responsible for our biological children and relatives than non-related friends and strangers. However, this distinction is deceptive in this case and may not be as relevant as it seems to be. This is especially true in cases of sperm donations.

If biological relation is that important to a child's interests and welfare, then sperm donors should also be financially responsible for the welfare of the children that their sperm produces. Overall explicitly discusses sperm donation cases, and she claims that they are a legitimate exception to the rule. She states:

Donor insemination is a legitimate exception; women who obtain donor insemination acknowledge, in most cases, that the inseminator will have no material or moral responsibility for the resulting child. The basis for this exception is the formal prior agreement in writing, which is entered into freely, autonomously, and informedly by both the gestator and the inseminator, that the inseminator will be materially and morally detached from his offspring. The significance of the "purloined sperm" cases, however, is that there is no prior agreement whatsoever; hence, the male is not absolved of his responsibility (Overall 2012: 43).

Overall argues that the formal agreement entered into before insemination makes this case a legitimate exception. There are several issues with Overall's perceived dichotomy of the purloined sperm case and the sperm donation case in this instance. Firstly, the inseminator in the purloined sperm case is never given the opportunity for a formal prior agreement in writing, because he is not participating in a pregnancy-risking behavior. As already argued, oral sex is 100 percent effective for preventing pregnancy; therefore, there is no incentive for the inseminator to seek a formal agreement. Secondly, it is the deceit and thievery of the gestator, unbeknownst to the inseminator, which created the purloined sperm situation, so it was impossible for the inseminator to be aware of the need for a formal prior agreement in writing beforehand. As already noted, this makes him a victim of deceit and a victim of the circumstances. Also, since I've shown how Overall's claim of negligence is unwarranted, the inseminator is, thereby, innocent within the case, and, due to the inseminator's lack of opportunity, the prior

formal agreement isn't an overridingly relevant distinguishing factor between the two cases.

This leaves us with two very similar cases. On the one hand, we have a pregnancy resulting from theft and deceit, and the inseminator - the victim of the theft and deceit - is financially and morally responsible for the impending child when he was shown to have performed no wrong-doing. On the other hand, we have a pregnancy resulting from a willful sperm donation, and the sperm donor is not financially or morally responsible for the impending child due to a prior formal agreement that the purloined sperm inseminator was never offered. This is not justice. Both of these men are innocent men who did not commit any act of wrong-doing, so how does Overall justify making the former financially responsible for the child and the latter not? As shown above, the existence of a prior formal agreement shouldn't be a distinguishing factor between the two cases, because in the purloined sperm case the inseminator was never allowed the opportunity to attain an agreement due to the deception and theft.¹⁰ Therefore, it follows that if the child's interests and welfare supersede the interests of the inseminator, then they should also supersede the interests of the sperm donor. This is obviously a counterintuitive claim, and it makes this objection highly questionable and implausible.¹¹

¹⁰ One cannot argue here that he could have attained an agreement for the oral sex, because, as I've previously argued, it is not a pregnancy-risking behavior. One could still argue that he could have attained an agreement in case he somehow foresaw the purloined sperm case happening; however, he would then necessarily need to attain prior agreements from any female capable of purloining his sperm after masturbation or nocturnal emissions, which I've shown to be logically equivalent to purloining sperm from oral sex. This is obviously ludicrous and virtually impossible, so the objection isn't sustainable.

¹¹ It should be noted that the previous argument against claim two in this case is only relevant to the cases of prospective parent disagreement where deceit and/or theft is involved. In non-deceitful cases of prospective parent disagreement, this argument doesn't necessarily work. However, it will be apparent how the second assumption is nullified in non-deceitful cases of disagreement after I address the problems of procreative asymmetry in the next section.

The fact of the matter is the purloined sperm situation is a case with no winners. Short of purchasing purloined sperm insurance, everyone from the child to the inseminator is probably going to end up losing something, and it might be irrational to expect anything else in a case so fraught with deception. I contend that the inseminator should not be financially responsible for the child, but, obviously, someone needs to be. This is where religious institutions, charitable organizations, government agencies, and other nonprofit organizations fill a role in society. They serve people in need that do not qualify for most standard avenues of aid, and they also specialize in aiding those in loophole/borderline cases and cases of extenuating circumstances, which I'm sure the purloined sperm case would be considered. These institutions and organizations won't be able to help everyone, and the system is not perfect. However, there isn't anything better about making an innocent person responsible for the deceit of another.

Claim 1: Procreative Asymmetry

With the purloined sperm case settled, all that remains to discuss is the first two claims in non-deceitful cases of prospective parent disagreement, which is what I will be focusing on in this section.¹² In both deceitful and non-deceitful cases of prospective parent disagreement, there is a substantial asymmetry in the rights and powers of the gestator versus those of the inseminator. When pregnant, prospective mothers do not need to notify the prospective father of a planned abortion nor receive his consent to

¹² It is important that I note that I'm solely focusing on non-deceitful cases of disagreement here, because most of my arguments will assume that the parents will have some sort of discourse over their disagreement. If I was discussing deceitful cases of disagreement, then I wouldn't be able to assume that the gestator would inform the inseminator in time for an abortion, or at all.

receive an abortion, and this creates a substantial asymmetry between the rights of the prospective mother and prospective father. Dien Ho labels this as procreative asymmetry, and he claims that it arises out of the woman's ability to "make unilateral procreative decisions (insofar as they can legally choose, on their own, whether to continue the pregnancy or abort), but men cannot because they can legally neither prevent nor compel an abortion" (Ho 2008).

Ho claims that this asymmetry is unjustified due to a misunderstanding of the difference between procreative autonomy and bodily autonomy. Bodily autonomy is what entitles women "dominion over their bodies," and this is what justifies abortion when it is desired by both parties, according to Ho (Ho 2008). The gestator's bodily autonomy also prevents the inseminator from forcing an abortion on her. However, this bodily autonomy does not give the gestator the right to make unilateral procreative choices for the inseminator, because this violates his procreative autonomy. Procreative autonomy is defined as a right to control one's own role in procreation (Dworkin 1993). The bodily autonomy of the gestator does not give her dominion over the inseminator's procreative right to control one's own role in procreation. Ho states, "No one should be allowed to make procreative decisions for another competent individual who is unwilling to procreate" (Ho 2008). Furthermore, the unjustifiable nature of this asymmetry is derived from our "justified moral commitment to both women's and men's equal moral rights and duties" (Ho 2008).

Overall acknowledges this asymmetry, but she claims that it is justified due to the nearly impossible nature of procreation to be symmetrical between the gestator and the inseminator. Ideally, moral rights and duties would be equally distributed across both

genders; however, Overall believes that it just isn't feasible in procreation. For this situation, "equality need not mean 'sameness,' and in the context of procreation sameness is, in some respects at least, impossible" (Overall 2012: 41). She goes on to state:

A man, on the one hand, merely needs to produce viable sperm and be capable of erection and ejaculation. A woman, on the other hand, must be able to produce viable ova and sustain a pregnancy. Her body devotes *nine months* [emphasis added] to the creation and nourishment of the fetus, after which she labors and delivers the baby. The amount of work and physical and psychological 'investment by the woman and the man, respectively, is staggeringly different in *quantity and quality* [emphasis added]. Therefore, there should be no prima facie assumption that in practice the reproductive rights and duties of women and must be expressed in exactly the same way. (Overall 2012: 41-2)

For Overall, then, the time, energy, and contributions that women put in greatly outweigh, both quantitatively and qualitatively, the time, energy, and contributions put in by men, and this justifies the procreative asymmetry that is displayed in prospective parent disagreement.

Though Overall is correct in stating that women contribute much more to procreation than men, she is wrong in assuming that the procreative asymmetry inherent in prospective parent disagreement is justified due to the asymmetry displayed in the procreative workload of the gestator and inseminator during pregnancy, because she mistimes the approximate date of disagreement. If the disagreement occurred at the birth of the child, then her argument would be relevant. Usually, though, if disagreement occurs, it happens much earlier in the pregnancy, so the asymmetry in the procreative workload that she uses to justify the procreative asymmetry isn't necessarily relevant.

To see why it isn't relevant, one only needs to look at a study of the timeline of abortions. In a study on abortions from 1969 to 1999, a group of researchers found the following:

- 1) Fifty-eight percent of all abortions for which gestational age was reported were performed at ≤ 8 weeks of gestation.
- 2) Eighty-eight percent of all abortions were performed before 13 weeks of gestations.
- 3) From 1992 (when the data was first collected) through 1999, there were marked increases in the percentage of abortions performed at ≤ 6 weeks of gestation [Presumably due to advances in pregnancy detection methods] (Elam-Evans, Strauss, Herndon, Parker, Whitehead, Berg 2002: 1-2).

Most women find out that they're pregnant during the fourth through eighth week of gestation. Since the study states that the majority of women receive an abortion during or before the eighth week of gestation, they must find out that they're pregnant at least one to two weeks before the abortion, which gives them time to mull over the decision, set up an appointment, and receive any state-mandated counseling that may be required beforehand. So I'll posit that the average woman figures out that she is pregnant during the sixth week of gestation.¹³

This seems to imply that the disagreement would occur in the sixth and seventh weeks of gestation, before most women who decide to terminate actually have the abortion. To be fair, though, only the majority, roughly sixty percent, have the abortion before week eight, so she might be in the minority that has it in the time period between eight and thirteen weeks of gestation. At any rate, I think it is fair to posit that *if* she was

¹³ I am assuming that the woman actually notifies the father of the pregnancy, because, otherwise, this argument is irrelevant. I think this assumption is valid, though, because the whole issue surrounding this chapter of Overall's book is prospective parent disagreement. You can't have Overall's type of disagreement in this situation without the man knowing that the woman is pregnant, so it seems necessary that the gestator does notify the inseminator of her pregnancy.

going to have an abortion it would be before the thirteenth week of gestation. This leaves approximately seven weeks for the prospective parents to decide what to do – to keep the baby or have an abortion.

This is relevant because Overall's justification of the procreative asymmetry is due to the asymmetry in the procreative workload. But if the procreative workload is not as asymmetrical as Overall assumes, then it follows that the procreative asymmetry should also not be as asymmetrical as it is. In the quote above, Overall suggests that the mother, "*devotes nine months* [emphasis added] to the creation and nourishment of the fetus, after which she labors and delivers the baby" (Overall 2012: 42). But why is this relevant if the father does not want the child at weeks six and seven when the "contributions" of the mother and father are only minimally different? Future, potential contributions should not matter before they happen when a particular disagreement's outcome dictates whether the contributions actually obtain. In situations where both parties have the same desire, yes, they do matter, but when one party does not want the situation to obtain, I fail to see how the opposite party's future, potential contributions are relevant.

Let's suppose that my girlfriend and I are invited to host my work Christmas party. Hosting a work Christmas party is an honor at my place of employment, and we signed up many years ago and are just now getting our chance to host. When I start to discuss this issue with my girlfriend, we discover that I changed my mind and don't want to host it anymore, but she still does. For the example's sake, let's say that she will be fully responsible for hosting the party and getting everything ready, which is more time and energy that she contributes to the task than me. This creates an asymmetric workload.

It doesn't follow that these future, potential contributions would give her the right to ultimately decide whether or not we host the party in the first place, because those contributions are contingent on throwing the party.

In fact, it seems to be the exact opposite; rather than have a positive sense of the right towards asymmetrical power, it seems that she only has a negative sense of the right. Her potential, future contributions do not give her a positive right to allow these contributions and hardships to obtain. Her potential, future contributions only give her a negative right to *not* allow these contributions and hardships to obtain. Future contributions and future asymmetrical workloads, then, would only imply a right to *deny* the party rather than welcome it.

This example is analogous to prospective parent disagreement. Future, potential contributions and asymmetrical workloads of the gestator would only seem to be relevant in cases of her denying or preventing those sufferings rather than welcoming them or keeping the pregnancy. So she would be on powerful grounds in the opposite case of prospective parent disagreement – when the gestator doesn't want to keep the baby but the inseminator does. However, the future asymmetric workload of the gestator is irrelevant in cases of disagreement when the gestator does want the baby and the inseminator does not. This means that at the time of disagreement there is no *substantial* asymmetry between the procreative workloads of the gestator and inseminator, and this asymmetry can no longer be used to justify procreative asymmetry. This proves that Overall's first claim is false, and the procreative asymmetry displayed in prospective parent disagreement is unjustified.

Before shifting focus to the solution to this problem, I must note that there is still an asymmetry between the procreative workloads of the gestator and inseminator at the time of disagreement – a smaller asymmetry but an asymmetry nonetheless. Earlier I noted that I would grant for my argument that the abortion could happen up to the thirteenth week of gestation, and this aligns well with the ending of the first trimester of pregnancy. In the first trimester, the gestator regularly experiences the following: nausea, dizziness, mood swings, heartburn, constipation, swollen breasts, general fatigue, and vaginal discharge. Also, in the first trimester, the fetus also grows and changes substantially, though the first trimester pales in comparison in fetal growth and maturation to the second two trimesters. The inseminator does not have to experience any of these factors (though he may counter that he has it worse off by having to deal with the gestator during this time!), and this creates the smaller asymmetrical procreative workload between the two. This smaller asymmetry is crucial to the solution of the problem.

The Solution to Procreative Asymmetry

Since Overall's first claim is unsound, there is in fact a need to have a, somewhat, symmetrical relationship between the rights and autonomy of the inseminator and gestator in prospective parent disagreement. As Overall notes, though, it is almost impossible to create a fully symmetrical relation between the rights and autonomy of both parties, so we must settle to be as symmetrical as possible. We must therefore strive for the following: 1) respect the bodily autonomy of both the gestator and inseminator, but specifically the gestator, 2) respect the procreative autonomy of both the gestator and

inseminator, but specifically the inseminator, and 3) respect the genetic rights each party has over their share of the genetic material that compromises the fetus.

As Ho noted earlier, the bodily autonomy of the gestator allows her to have an abortion, if she so desires. Her bodily autonomy also makes it impermissible for the inseminator to force her to have an abortion, so it is inevitable for the gestator to have near unilateral control over the actual decision of abortion. In prospective parent disagreement, the bodily autonomy of the inseminator is a non-issue, because it has no relevance to any potential outcomes.

Since we're discussing this particular manifestation of prospective parent disagreement, though, the procreative autonomy of the inseminator is relevant. Though he cannot control the decision of abortion, his procreative autonomy ensures that he has some sort of control in his role of procreation. It then follows that if he does not want to become a parent, his right to procreative autonomy allows him to make this choice. Furthermore, since he cannot force an abortion, all responsibilities that he may have towards the child should be voided upon this decision, should the gestator continue with the pregnancy. This action would respect both parties' right to procreative autonomy.

As promised earlier, it can now be displayed how Overall's second claim is unsound in cases of non-deceitful prospective parent disagreement. Overall's second claim is that the child's interests and well-being always trump the father's interest in not being a parent. Firstly, a child's future interests and welfare cannot supersede the inseminator's fundamental right to procreative autonomy. Interests and welfare cannot violate people's rights without some further consideration. Secondly, with the need to have a symmetrical relationship in the rights of procreative autonomy a premium, it is

clear that if we are to respect the gestator's procreative autonomy we must also respect the inseminator's procreative autonomy. Therefore, the child's interests and welfare cannot violate the inseminator's right to procreative autonomy without also violating the gestator's right to procreative autonomy. Thirdly, if the child's interests and welfare did violate both parties' right to procreative autonomy, this would work against the interests of the child. Since the gestator wants to keep the fetus, violating her right to procreative autonomy would put the pregnancy in danger, which seems counterproductive to the child's interests and welfare.

Even after these arguments, it still might seem that the inseminator is getting off pretty easily. Though one may agree that his procreative autonomy must be respected, the thought of the inseminator leaving the gestator to raise the baby alone is a little disconcerting.

It must first be noted that the gestator is not necessarily bound to have the child after the inseminator's decision. To respect her procreative and bodily autonomy, she still can decide to abort, as long as it's still within the legal time frame set by the state. This is a perfectly legitimate alternative. Furthermore, since the onus of the child's interests and welfare falls solely on the gestator, she must think prudentially about this decision and the child's interests in being raised by a single mother.

If she does still want to keep the baby, though, then it can be argued that the voiding of all inseminator responsibility is also warranted due to the genetic rights that the inseminator is completely signing over to the mother with his decision. In addition to bodily and procreative autonomy, humans have a right to their genetic material and specific genome. Before the fetus reaches the point of personhood, the arbitrary point

where the state suggests that the fetus gains a right to life and abortion is no longer permitted, it is generally considered an amalgamation of cells that is comprised of the genetic material of both the inseminator and gestator. Both parents contribute exactly fifty percent of the genetic material that comprises the amalgamation of cells, so they both have genetic rights to half of the impending child. Since human biology is divided into sexes and the bodily autonomy of the gestator prevents a forced abortion, an inseminator who does not want his genetic material to actually obtain in a child is having his genetic rights violated. I suggest that along with his right to procreative autonomy, it is his genetic rights that make the voiding of all his responsibility to the child permissible.

Some may argue that it should be taken a step further with some sort of “sperm/genetic alimony” payment(s) from the gestator to the inseminator for violating his genetic rights. They argue that eighteen years of no responsibility for a child is not comparable to a lifetime of one’s genetic rights violated.¹⁴ These objections seem to be overreaching. Yes, there will be some inseminators who would adamantly prefer the abortion of their child over choosing to not raise it on their own, and this would create a substantial violation of their procreative autonomy and genetic rights. However, the USDA has recently estimated the, *very conservative*, cost of raising a child to the age of eighteen at approximately \$250,000 (Lino 2013: 21). That is a very large number, and, assuming an equitable share of the expenses, the voiding of financial responsibility for eighteen years would be approximately \$125,000. Furthermore, I mentioned in the last section that a small asymmetry in procreative workload still existed in the first trimester

¹⁴ This refers to the lifetime that the inseminator’s specific genome comprises the unwanted child. For someone who did not want to reproduce or his “seed” or “own blood” to be raised by another, this might be a substantial violation.

of pregnancy. The combination of this asymmetry with the voiding of approximately \$125,000 of financial responsibility is sufficient to compensate the inseminator for the violation of his genetic rights and respecting of his procreative autonomy. So in no way does it seem that sperm/genetic alimony payments are needed to satisfy the violation of the genetic rights of the inseminator, and both the inseminator and gestator are well compensated in their rights, respect, and autonomy.

On a final note, I should remind the reader that this dynamic is not just to benefit the inseminator. My argument works equally well for gestators as inseminators. In both deceitful cases and non-deceitful cases of prospective parent disagreement, the gestator's procreative autonomy must be respected, and she should not be responsible for any decision that violates her procreative autonomy. These types of situations rarely obtain, though, due to the power of the gestator's bodily autonomy in prospective parent disagreement. These types of situations for gestators arise mostly in same-sex relationships, and it might be an issue we face more in the future with the possibility of ectogenesis. However, as previously stated, gestators contain the same rights and autonomy as inseminators, and they should be treated as such.

Conclusion

To conclude, though Overall's argument sounds compelling, her claims prove too bold to stand up to scrutiny, and her arguments are found wanting. A procreator's rights and autonomy must be respected, and this is most clear in prospective parent disagreement. Symmetry between the sexes is a virtue that we are hardly afforded, but it is a crucial end that we must continually strive for if we ever plan on reaching true gender

equality. Though Overall thinks it is virtually impossible, there is no better place to begin our march towards true gender equality and symmetry than through addressing the many problems of prospective parent disagreement.

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