Abortion and Fathers' Rights

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> [S]acrifice all desirability to truth, *every* truth, even plain, harsh, ugly, repellent, unchristian, immoral truth.—For such truths do exist.
>
> —Friedrich Nietzsche, *On the Genealogy of Morals*, essay I §1

The Problem

In this chapter I argue that three widely accepted principles regarding abortion and parental rights are *prima facie* jointly inconsistent. These principles are probably accepted by most who consider themselves feminists, so the conundrum posed is particularly acute for them. There is one obvious way of resolving the inconsistency. However, as will be made clear, this solution is prevented by a fourth principle—that fathers have an absolute obligation to provide material support for their children. I argue that this principle is false, that fathers have no such absolute obligation, and thereby provide a way of making the first three principles consistent.

These three principles are apparently inconsistent.

1. Women have the moral right to get abortions on demand, at their discretion. They can make unilateral decisions whether or not to abort, and are not morally obligated to consult with the father, or any other person, before reaching a decision to abort. Moreover, neither the father nor any other person can veto or override a mother's decision about the disposition of the unborn fetus. She has first and last say about what happens in, and to, her body.

The principle formulated here is an extreme one. More moderate versions might replace it. For example, one might think that maternal motives are relevant as to whether the abortion is a permissible one, or that if having the abortion breaks a promise then it is impermissible, or that the fetus becomes a moral person at some developmental stage and cannot then be permissibly aborted. Such modifications will not substantially affect what will be said about fathers' rights, given suitable changes, *mutatis mutandis*, in the description of those rights.

2. Men and women have equal moral rights and duties, and should have equal legal rights and duties.[1] It is, of course, a matter of some sensitivity as to just what satisfies the equality requirement. More will be said about this later.
3. Parents have a moral duty to provide support for their children once they are born.[2] Any legal duties of support (e.g., child welfare laws or court-enforced child support) should supervene on this moral duty.

Given both (2) and (3), we can conclude that the mother and father have equal moral obligations toward their child once it is born. Although it is an interesting question as to *why* (3) is true (even granting that it is),[3] the issue before us here is the distribution of rights and duties *before* the child is born, particularly during the pregnancy of the mother. Principle (1) tells us that the mother has the right to an abortion during her pregnancy. Since (2) tells us that men and women have equal moral rights, it seems

that we can therefore conclude that men also have a right to an abortion. On the face of it, this seems either absurd or trivial: absurd because men clearly cannot get pregnant, and so it is silly to talk about them having a right to an abortion; and trivial because it may be true that this conditional right is trivially true of men: If one is pregnant, then one may get an abortion. So for a man to insist on his right to an abortion appears pointless. However, it is pointless only if we understand the right to an abortion in a certain way, viz, the right to an abortion is the right to end one's *own* pregnancy.

Why would anyone care about having a right to an abortion? There are a variety of reasons some women no longer want to be pregnant: They cannot afford another child, they are not psychologically prepared to be a parent, a child would hinder the lifestyle they wish to pursue, they do not want to endure the hardship of pregnancy, and so on. All of these reasons have to do with burdens or hardships that the mother faces in the future. For whatever reason, the mother is not (currently) willing to suffer these hardships, and so has an abortion in order to avoid them. Fortunately, the duties and burdens that the mother wants to escape are ones that she can in fact morally escape. She has no obligation to endure the hardship of pregnancy (according to [1]), nor any absolute, inevitable duty to shoulder the burden of an infant. True, these are burdens and duties that she faces if she continues with the pregnancy, but they are ones that she can avoid by having an abortion. Thus, it seems that the motivation for wanting a right to an abortion is because a mechanism is wanted to avoid future duties and burdens. Abortion constitutes just such a mechanism.

If it were immoral to avoid these future duties of childrearing (i.e., if they were absolute and morally inexorable), then clearly there could be no *right* to an abortion. Her right to an abortion is a liberty right; that is, having the right tells us that it is morally permissible for her to have an abortion. Now, if doing X entails an immoral state of affairs Y (a state of affairs that is morally worse than some state of affairs Z that the agent could have caused to obtain instead), then it cannot be permissible to do X.

Thus, given (1), it must be morally permissible to avoid future hardships, burdens, and duties of the sort described herein. We might characterize this as a *right to avoid future duties*.[4] This is not to imply that persons have a right to avoid future duties of any sort, or that they are at liberty to do whatever it takes to avoid them, or that the right could not be bounded or abrogated by various promises and commitments. The right to avoid future duties as discussed in this chapter is the right to avoid duties of childrearing and child support that, given a pregnancy successfully brought to term, one will have. The right to an abortion seems logically dependent on this right. The mother does not especially have a right to kill the fetus; rather, what she has is a right not to have to deal with it any more in the future.[5] Abortion itself might be looked at as a means, or a mechanism, of avoiding certain future duties. Women, therefore, have the right to avoid future duties (of the sort described herein), and abortion provides them with a way of exercising this right.

Now consider the case of the father. He, too, is facing future duties; in fact (aside from pregnancy itself), the same ones as the mother, as (2) and (3) specify. However, the father, having participated in conception, cannot escape the future duties he will have toward the child. The father can decide that he cannot afford another child, that he is not psychologically prepared to be a parent, that a child would hinder the lifestyle he wishes to pursue, and so on, to no avail. He is completely subject to the decisions of the mother. If she decides to have the child, she thereby ensures that the father has certain duties; duties that it is impossible for him to avoid. Even more, the mother is solely in charge: If she wants to have an abortion and the father does not want her to, she may anyway. If she does *not* want to have an abortion and the father does want her to, it is permissible for her to refuse to have one. If there is any conflict between the mother and the father here, the mother's wishes win out.

If we analyze the right to an abortion in the way suggested herein—as a right to end one's own pregnancy—so that the father may possess this right, but only in an absurd or trivial way,

the father still lacks something that the mother possesses: a legitimate mechanism for avoiding future duties. We cannot rectify this by redefining the right to an abortion so that the father will have some say as to whether the mother may permissibly abort, since this will violate (1). Thus, the mother has the right to abort at any time, and the father lacks the right to "abort" at any time. That is, (1)–(3) tell us that the father has a right to avoid future duties; however, since he cannot personally get an abortion (owing to biology) and cannot justly force the mother to abort (owing to [1]), he apparently has no way to exercise this right. Without any way to exercise this "right," the father *de facto* lacks a right that the mother has, and so (2) is violated, and (1), (2), and (3) are inconsistent.

It might be argued that, although true, this is an unavoidable (and hence acceptable) consequence of biology. The mother has some kind of absolute right over the disposition of her body, and in a battle of rights, these rights over one's body trump all other rights in the fray. So the fact that the fetus is in her body ensures that she has final say over it.[6] Not only is this "right over one's body" supposed to guarantee that the mother can abort over the father's objections,[7] but also that she can carry the child to term even if the father insists on an abortion. Here I am not particularly concerned with the conflict generated when the father wants to have the child and the mother wants an abortion. Although I am somewhat suspicious of the content and extent of a "right over one's body," it makes no difference to the arguments to be presented if the support for principle (1) comes from an appeal to such a right.

The difficulty is that it seems that we might agree to all of this and still argue that the father is ill treated. Even if biology prevents men and women from having *absolutely identical* means to exercise their rights, it remains that what we should do is try to achieve equal opportunity to exercise rights as much as possible.[8] Perhaps we will never attain complete equality (biology may prevent us), but we should try our best.

Another objection is that since the father does *eo ipso* have a right to avoid future duties (he just has no opportunity or mecha-

nism to exercise this right), (2) is satisfied, and (1)–(3) are consistent. However, I think it is plausible that genuine equality insists that not only do persons have various liberty rights, but also that they should have equality of opportunity to exercise these rights. So long as some, but not all, persons are equipped with the means to exercise their rights, we cannot say that people have *really* been provided with equal rights. So, even if fathers do have a right to avoid future duties, without any way of acting on this right, the equality principle (2) has *not* been satisfied.

Of course, we might consider that having the opportunity to exercise a right is not itself a matter of rights. Having such a mechanism is more a matter of fortuitous circumstance. Therefore, the fact that fathers cannot act on their right to avoid future duties does not involve a violation of their rights, and (2) is not contradicted. I confess that my own intuitions about this matter are not entirely clear. Nevertheless, this much seems true: What we should do is try to equalize the powers people have with respect to the exercise of rights as much as possible. We might look at this as striving for parity among actualizable rights. The need for such equality of opportunity can be seen in the case of a poll tax. Suppose we have a reconstruction-era tax that one must pay in order to vote, and that the tax is in place precisely to prevent or discourage some class of citizens (blacks, say) from exercising their voting privileges. Now, a defender of the tax might say that blacks are not being deprived of their right to vote; after all, they still have just as much of a right to vote as anyone else. All they have to do is pay the tax. Moreover, since all would-be voters must pay the tax, blacks are not being unfairly singled out in any way. Nevertheless, such a poll tax seems morally pernicious. The reason for this, I maintain, is because formal parity in rights is not enough—after all, whites and blacks have this under the poll tax. We also need to have equality of opportunity to exercise rights. This is what is lacking in the poll tax case. Whites have the opportunity to exercise their right to vote (since they have the money to pay for the tax), but blacks do not (since they do not have the money). It is not too important whether equality of

opportunity to exercise rights is itself seen as a right or not. All that is needed to make my case is agreement that something has gone seriously wrong in the moral realm when such equality of opportunity could be satisfied (as in the poll tax case), but is not. Formal parity between trivial and useful rights is insufficient to fulfill the requirements of morality. It is this fact I mean to capture in saying that the acceptance of (1) and (3) is at odds with the precept expressed in (2).

Another case is that of birth control. It is often claimed that both men and women have an equal obligation to provide birth control, and that it is unfair to force women to shoulder the brunt of this responsibility. But why should this be the case? After all, women voluntarily run the risk of pregnancy by having sex and (setting aside socially imposed requirements and risk of disease) they are the ones who will be affected, not men. On the principle that those knowingly at risk from their own activities are also responsible for risk prevention, some case can be made for the claim that the exigencies of biology ensure that birth control is solely, or at least largely, the responsibility of women. That this conclusion is wrong apparently stems from the intuition that duties and responsibilities should be distributed between the sexes as evenly as possible. Biological differences should be minimized so that moral parity can be maximized. Thus, men should have an equal obligation to provide birth control.

So, in order for us to satisfy our goal of achieving equality as best we can, we should not only admit that fathers have a right to avoid future duties, but there needs to be some mechanism by which they can, by personal fiat, exercise that right. Mothers have the right and a mechanism—the mechanism of abortion. The mechanism employed by fathers, of course, need not be abortion. The important thing to note is that even if we grant that the father cannot avail himself of *abortion* as a way out, it is a giant step from here to conclude that he cannot avail himself of *any* way out. Perhaps it will do to say that, sometime during the span of time that a mother may permissibly abort, a father may simply declare that he refuses to assume any future obligations. If we are

prepared to speak loosely of mothers having the right to an abortion, we might also loosely talk of fathers having the right of refusal. By admitting that fathers have this right, we more closely approximate the ideal of moral parity. The right of refusal is to be designed as a parallel (as demanded by [2]) of the mother's right to an abortion (as specified in [1]). Let us put it this way: A man has the moral right to decide not to become a father (in the social, nonbiological sense) during the time that the woman he has impregnated may permissibly abort. He can make a unilateral decision whether to refuse fatherhood, and is not morally obliged to consult with the mother or any other person before reaching a decision. Moreover, neither the mother nor any other person can veto or override a man's decision about becoming a father. He has first and last say about what he does with his life in this regard.

Suppose that the mother is pregnant and the father tells her during the time that she may permissibly abort, "I think this was a big mistake, we should not have done this, I regret that you are pregnant, and wish you would have an abortion." The mother, according to principle (1), may fairly respond, "Sorry, I want the child, and will carry it to term even though you want me to abort." If the father has the right of refusal, he can justly respond, "OK, if that is your decision, have the child, but it will be solely your responsibility. I want out of the deal, and I do not want to have anything to do with the child or any responsibilities toward it." More than this will be needed, of course. The mother's declared intention to have an abortion does not constitute having one, nor is her declaration as expensive, difficult, and unappealing as the actual abortion. An adequate legal implementation of a father's right of refusal will involve written contracts and sufficient penalties to the father to make the exercise of his right of refusal as costly to him (in the broadest sense) as the mother's exercise of her right to an abortion is to her. Fathers should not find exercising a right of refusal to be more appealing than mothers generally find getting an abortion, but they should not find it less appealing either.

The right of refusal solved the problem of inconsistency among our three moral principles. However, this solution is blocked by a fourth commonly accepted principle:

4. Fathers are under an absolute moral obligation to provide for the welfare of their children, despite the intentions or desires of the father before the birth of the child.[9] Something close to this is reflected in the law, and serves to underwrite paternity suits and at least some of the complaints about "deadbeat dads."

There are whole range of cases here, some of which make (4) look pretty good, others that make it look false. In the latter camp, suppose that a man donates sperm to a sperm bank, which is subsequently used in artificial insemination. Surely the father has no duties toward any children that are the result of this anonymous donation. Suppose a woman gets pregnant as the result of anonymous sex engaged in at a club like (the now-defunct) Plato's Retreat. Here, too, it does not seem that the father has any obligations to her offspring. What of the results of a one-night stand? Things begin to get murkier. How about a lost weekend? A two-week fling? Does it matter if birth control was used or not? The waters are muddied indeed. Fortunately, as we will see later, the line-drawing debate can be completely avoided.

Those willing to defend something like (4) often have in mind a case of a longish relationship in which the woman gets pregnant and the father, unwilling to be burdened with a child, ends the relationship, or leaves town. Surely the father should not be allowed to just saddle the mother with the child and get off scot-free. He willingly and voluntarily engaged in sex and knowingly took the risks in full awareness of the possibility of pregnancy. For him just to leave the mother and have no future duties toward the child is to dump 100% of the burden on the mother when she only assumed 50% of the risk. This, advocates of (4) claim, is manifestly unfair—it means that (ignoring disease and such) sex has no consequences for men, and massive consequences for women. This is why we need a principle like (4) that

ensures that there are consequences for men too, and one of the reasons that we must protect a woman's right to an abortion, à la principle (1).

It is important to note that in the discussion of (4) that will follow, I will not be discussing the obligations of fathers to continue to support children that they have already been voluntarily supporting. So, in the case of a newly divorced father with a two-year-old child that he has been supporting all along, it may be the case that he will continue to have future material obligations toward this child despite a desire not to. Court-ordered child support may well be justified in such a case, but the justification will come from a different principle than (4). Principle (4) has solely to do with the connection between paternal obligations and prenatal paternal desires.

Admitting that fathers have the right of refusal provided a way of making principles (1), (2), and (3) consistent. The introduction of (4) rejects this solution, and once again generates inconsistency. The mother has the right to do something that the father does not have the right to do: get out of any future commitment to the (yet unborn) child by personal fiat. The mother can get out of it by terminating the life of the fetus, and the father cannot get out of it in any way, not even by refusal. Again principle (2) is violated.

There seem to be only four options. The first is that we can abandon principle (1). There are two ways of giving up (1). The first is to say that the conservative is right after all, and abortions really are impermissible. The second is to maintain that abortions continue to be permissible, but there must be some sort of mechanism for paternal consent. Mothers will have to consult with fathers before they are allowed to have abortions, and (perhaps) fathers will be allowed to insist that mothers have abortions if the father so decides. Women will no longer have complete control over their bodies, and will be subject (at least in part) to the decisions of men.[10]

We can abandon principle (2). Men and women do not have equal rights and duties, or striving for a balance of powers with

respect to the exercising of rights is not a valuable goal. Somehow the biological asymmetry of childbirth gives rise to an insuperable moral asymmetry. I suspect that most who accept all three principles will opt for rejection of (2), the equality principle. However, even though one might (with some plausibility) argue that biology prevents fathers from having a right to procure an abortion or insist that the mother have one, it is *much* harder to argue that biology forbids fathers from having a right of refusal. At the very least, such a right has no obvious connection to biology.

We can reject principle (3). Parents do not have an obligation to provide support for their children. Among other problems with this approach, it will entail the rejection of principle (4), whereas rejecting principle (4) will not require us to jettison (3). Thus, other things being equal, if getting rid of the comparably weaker (4) alone will restore consistency, we are better off doing that than getting rid of both (3) and (4).

The last alternative is that we can abandon principle (4) and grant that fathers have a right of refusal. If a father-to-be declares his refusal to accept fatherhood (with attendant legal details) and skips town, abandoning his pregnant girlfriend, he is perhaps callous and unfeeling, but he has not done anything morally wrong. He is no more unfeeling than if the mother intentionally aborted over his strong objections. Just as she can abort the fetus at her discretion, so too can he exercise the right of refusal at his. She can get out of the deal when she wants, and so can he.[11] To reject (4) and accept a father's right of refusal is a radical change in most people's ordinary beliefs. If taken to heart in a broader social context, I believe it would ultimately result in considerable legal change with respect to paternity suits and court-ordered child support. This is the position for which I will argue.

The Solution

Since all four of the principles seem plausible, and rejecting any one is distasteful, an argument in favor of rejecting any particular one over the others is needed. I will first marshall the argu-

ments in favor of rejecting (4), and then consider other solutions to the dilemma. I will argue that rejecting (4), counterintuitive as it is, is the most cogent solution available. This is why I claimed above that no line-drawing project is needed to adjudicate the cases seemingly relevant to evaluating (4). Principle (4) is false in every case. There are three arguments that I will develop to support the rejection of (4). Two arguments are suggested by positions taken by Judith Thomson in her well-known "A Defense of Abortion," and the last is an analogy that imports our moral intuitions from a logically parallel case.

Thomson's arguments are meant to support (1), and they do. But they also pave the way for abandoning (4). Thomson writes, "[Unless they implicitly or explicitly accept special responsibility] nobody is morally *required* to make large sacrifices, of health, of all other interests and concerns, of all other duties and commitments, for nine years, or even for nine months, in order to keep another person alive."[12]

It is this lemma that provides much of the support for principle (1). Without accepting some kind of special responsibility for the gestating fetus, the mother is under no obligation to keep it alive, even if it is a person. It is a direct consequence of (1) that the act of conception alone is insufficient to require of the mother that she make major personal sacrifices—most immediately the sacrifice of pregnancy and childbirth. Yet the father has done no more than participate in conception, and as a result he is required to make major personal sacrifices once the child is born. If conceiving alone does not count as accepting any special responsibility for a person for the mother, then it does not count as accepting any sort of special responsibility for a person for the father either. But (4) seems to deny this.

Another Thomsonian argument also supports this position. Her famous violinist case shows that someone who is the victim of a selfish, unilateral act (such as being kidnapped by the Society of Music Lovers, or being raped) is not obligated to make major personal sacrifices. By "unilateral" here, I mean that the victim had no say in what would happen, or, put another way,

was kept out of the decision-making loop. Yet if the mother were to carry on with a pregnancy over the father's strong objections, it seems that her act is a selfish, unilateral one. Continuing with the pregnancy was her personal decision, and executed with regard only for her motives and desires. The father was kept out of the loop entirely. That the mother can do all of this is ensured by (1). So it seems on Thomsonian grounds that the father should then be exempt from having to make major personal sacrifices (such as 18 years of child support). But (4) tells us that he is not exempt.

Analogies that capture the relevant data in the case of pregnancy also support the rejection of (4). For example, suppose Mary and Juan go into business together. They agree to build a factory, and each partner will put up half of the money at the start. The factory is to be built on property that Mary already owns. Suppose further that Juan is a quadriplegic and is incapable of physically assisting in the construction of the factory. Thus, Mary has agreed to build the factory herself, using the money they jointly supplied. Now, suppose that the factory is half finished and Mary decides that her finances will not be able to support the business in the future, and that she is not psychologically prepared to run a company. Mary wants to stop building the factory and dismantle what is already built (to sell off the pieces, say, or to restore her land to its original condition). She tells Juan that it is her property that the factory is on, and so Mary can do what she wants with her property.

If we agree with Mary that she should be allowed to break her agreement with Juan (by personal fiat), and thereby avoid any future obligation toward the company, does it not seem that Juan too should be allowed to back out if he wants?[13] We might, of course, argue that Mary should not be allowed to quit without first persuading Juan that the factory was a bad idea, and that it would be best for both of them to stop construction. After all, they are partners, and each put up half the money. But still this conditional seems true: If Mary is allowed unilaterally to quit the company without further obligation, then surely Juan is allowed to do so as well. The fact that the factory is on Mary's land does not seem

relevant to allowing Mary but not Juan to quit. After all, they both knew in advance and agreed that it would be on Mary's land. Nor does the fact that Mary is personally building the factory seem relevant. Again, both parties knew this in advance, and Juan is incapable of helping in the construction. If Mary is allowed to back out, then so is Juan. If Juan is bound to stick with the company despite his wish to leave, then surely Mary is as well.

It might be argued against this analogy that *no* analogy, no matter how carefully crafted, can mirror our intuitions about our bodies and pregnancy. The difference between the factory case and pregnancy is that the factory is not in Mary's body. It is on her land, sure, but it is not *inside* her, and this a crucial disanalogy. Our intuitions about our bodies and the rights surrounding abortion are unlike our intuitions about anything else. These intuitions are unique and primitive.

It is almost impossible to argue against this response. Any position that is defended on the grounds that the truth of the position is a brute fact is unassailable. The dialectic grinds to a halt. This state of affairs is unsatisfying for a couple of reasons. The first is that the brute-fact move seems like a last-chance act of desperation to save a position from a counterexample it cannot otherwise defeat. Argument from logical analogy is a classic and forceful way to philosophize, and we should be wary of attempts to close it off. Second, it is a surprising strategy for an abortion liberal to endorse. Many of the real advances in the abortion debate—ones helpful to the liberal position—have been carried along on the backs of analogies.[14] Resorting to the claim that no analogy can capture the moral facts surrounding pregnancy effectively rejects these arguments out of court, and so defends the liberal position at a costly price.

Competitors and Their Problems

There are, of course, other ways out. One is to find a way to resolve the inconsistency among the four principles without giving any up. Another is to give up either (1) or (2) while retaining (4).

A third approach is to agree that fathers have a right of refusal, and find some way of ensuring that fathers pay child support anyway, in spite of this right. The arguments for rejecting (1) are legion, well-known, and will not be rehashed here. I suspect that (2) will be a likely target of those wishing to keep (4), but I have no idea how an argument against retaining (2) (at least as an ideal) might proceed, and so I cannot evaluate such an argument here. But I have been able to identify two arguments that purport to resolve the inconsistency among the four principles, and one that tries to accommodate my results while keeping the feminist preanalytic data, and will consider these in turn.

The first argument that attempts to resolve the inconsistency is this: It is not that the father especially has a commitment to the future child, but rather he has an obligation toward the mother. This commitment consists in something like a responsibility to help support their progeny. So there are not any future duties toward a child that he could escape by having a right of refusal. His duties are toward the mother.

However, this does not seem right, because the mother has no analogous commitment toward the father. She has no responsibility to help the father support their progeny, since such a responsibility would entail a duty to the fetus that it be carried to term. One cannot support something by killing it. Yet the mother clearly has no such duty toward the fetus, as (1) tells us.

But perhaps I am misconstruing the strategy. Maybe what is going on is that the father has this conditional obligation: If the child is born, then the father has a duty to help the mother support it. This is all well and good, since it seems that the mother has a similar conditional obligation: If the child is born, she has an obligation to help the father support it. Equality is restored.

However, this response only sidesteps the issue, since it is within the mother's power to make sure that the antecedent of her conditional obligation never becomes true, and the father cannot similarly ensure the same about the antecedent of his obligation. True, the relevant duties are now between the parents, and not between the parents and the child, but this shift is a red herring.

The mother can avoid future duties through abortion, and the father can not. And principle (4) rules out the analogous paternal right of refusal. The problem remains.

A second argument that purports to resolve the inconsistency is this: The mother undergoes the burden of pregnancy, and receives the benefit of guaranteed paternal support. The father, by contrast, has the benefit of not having to suffer the burden of pregnancy and childbirth, and instead shoulders the burden of necessarily having to help support the child once it is born. Each party has their respective burdens and benefits, and these benefits and burdens are distributed more or less evenly. Thus, the equality principle (2) is satisfied, and (1), (3), and (4) are retained.

I think that there are several difficulties with this approach. The first is that although pregnancy is undoubtedly a burden of some sort, it is relatively short compared to the legal burden under which the father labors. The mother is pregnant for nine months, and in most cases is not suffering for much of that time. The father, by contrast, is obliged to pay considerable sums of income over a period of 18 years. The father's burden lasts 27 times as long. The distribution of burdens hardly seems equitable. It will not help to say that the mother has the same 18-year burden of support, since she *volunteered* to support the child by having it. The father, we are supposing, would have preferred the mother to have an abortion. Since the mother volunteered to support the child and the father did not, it does not seem right to say that she has the same *burden* as the father. We can appeal to the maxim of *volenti non fit injuria* here.

Another problem is this: If anyone should have more duties toward the child, it ought to be the mother, not the father. After all, she is the one who allowed (or is allowing) the fetus to gestate and mature in her body. Thus, it seems that she is establishing some kind of agreement with the fetus that when it is born she will provide for its well-being. The father, on the other hand, has not allowed the fetus to gestate and continue, and, let us suppose, strongly opposes its existence. Moreover, he explicitly rejects the idea that he has duties or future obligations toward the fetus or

the child it will become. It is strange, then, to insist that the duties the father acquires after the child is born are just as strong as the mother's. If anything, it would seem that the mother should have *more* and *stronger* duties than the father.

But these are really just side concerns. The central problem with the argument is that it, too, only sidesteps the real issue. We can grant the burden/benefit argument and still generate inconsistency. The mother can escape her burden of pregnancy by personal decision—having an abortion as guaranteed by (1). The father cannot escape his burden of support, either by abortion or by refusal (as insisted on by [4]). So the mother still has something he lacks—a morally permissible escape from future duties.

The final objection I will consider grants that (4) is false—fathers have a right to avoid future duties, and ought to be legally granted the mechanism of refusal in order to have a means of exercising this right. Nevertheless, the objection goes, society can override the individual rights of fathers if it is in the best interest of society as a whole. Just as society can declare the right of eminent domain, and occasionally override the individual rights of property owners by building a highway through their front lawns, so too can society decide that the general public welfare is benefited by placing strong duties on fathers, and the individual rights of fathers are justifiably outweighed by these policy concerns. Moreover, we are generally prepared to grant that it is morally permissible for social concerns to outweigh the concerns of individuals. Thus, recognizing the falsity of (4) need not give rise to major social change. The intuitions behind (4) can be preserved even if (4) is jettisoned.

There are two main paths this objection can take: The interest of the state in benefiting children, and the interest of the state in benefiting mothers. Bear in mind that this objection takes it for granted that neither children nor mothers have a *right* to financial support from fathers. This is one of the lessons drawn from the conclusion that fathers have a right to avoid future duties through refusal. No one can have a right against a father that he not be allowed to act in a way that is permissible for him.

Consider, then, the first path of this objection. The state decides that it is in the interest of society at large that children be assured of a certain level of financial security or material comfort. To promote this interest, the state does not distribute the burden evenly across all citizens, but instead levies a special tax on a subset. More specifically, the biological parents of these children are obliged to pay for their upbringing (of course, special provisions will have to built into the law to excuse biological parents when the child is adopted). In the case where the mother voluntarily submits to this (by not exercising her right to an abortion), and the father does not (by actively exercising his right to refusal), the father's rights are overridden, and he is still legally bound to pay child support.

One difficulty specific to this strategy is that we are on thin ice if we are prepared to engage in a wholesale suppression of individual rights for the pecuniary benefit of children. There are many children who would be better off living with adoptive parents than with their natural parents. Children born into poverty will, *ceteris paribus*, have worse life prospects that those children born to well-off parents. It would benefit these children, *ceteris paribus*, to take them from their natural parents and place them with wealthy adoptive parents. But surely this is wrong, and it is wrong because it unjustly usurps the rights of natural parents to keep their children. There are cases (e.g., child abuse) in which we might allow society to take children from their parents, but poverty is not one of them. Yet this case and the case of the father seem parallel: Society overrides the right of a biological parent(s) for the financial benefit of children. If we refuse to allow society to take children away from poor parents, so too should we refuse to allow society to override a father's right of refusal.

Let us consider the second path the social welfare objection might take. The state decides that as a contingent matter of fact, women have unequal standing in our society. They make statistically significantly less amount of money than men doing equal jobs, and they are not proportionately represented in positions of power in the government and in business. One practical result of

this is that single mothers raising children have a much more difficult time, and a greater burden, than single fathers raising children. Thus, in order to alleviate this burden, the state decides to override systematically the father's right to refusal. This amounts roughly to an affirmative action program for women: Equal treatment in one domain is temporarily suspended with the intention of addressing inequalities in another domain. Once other social inequities between men and women have been adequately resolved, fathers will be allowed to resume their exercise of a right of refusal.

Again, one should note that this path accepts the main conclusion of this chapter—that fathers have a right of refusal. What the argument rejects is the inference from this right to immediate social and legal change. There are several difficulties with the second path of the social welfare argument, and it is hard to tell *a priori* which of these is the most serious. One is that much more argument is needed to show that overriding the father's right of refusal is the best way to address the issue of unequal burdens in single parenting. Since it is presumably in the *state's* interest, or the interest of society in general, to sponsor such an affirmative action program, it may be that society in general ought to pay for it. Another problem is that even if overriding the father's right of refusal is shown to be the best solution, considerable argument is then needed to demonstrate that it is also fair or just to suppress this right. For example, suppose that the national economy (and hence society as a whole) is best served if slavery were still allowed. This in no way means that we are therefore justified in reinstating slavery. Moreover, the reason that we are not thereby justified in reinstating slavery is because slavery impermissibly violates individual rights.

In addition, there are two wholly general problems with the strategy of appealing to the general social welfare in order to maintain the *status quo*. One is this: Suppose that on the ground of eminent domain, the state decided to build a highway across the front lawns of all and only Jewish citizens, all the while maintaining that Jews have a right to own property unmolested. Clearly this "right" would then amount to nothing but a ruse. So too, by

telling fathers that they have a right to get out of future obligations through refusal but then invariably forcing these obligations on them anyway, it is clear that their "right" is an empty one. Granting such a right is mere trickery with words. One might object here that fathers do indeed have the right of refusal, it is just that their right is overridden—and there is nothing unusual or odd about overriding a right. This is true. But if a right is uniformly and consistently overridden, to the point that no one can exercise it except at some vague point in the distant future, one becomes suspicious as to whether there is a real right here. If a woman's right to an abortion is consistently overridden by society throughout her life, with a promise of allowing her to exercise it in the nebulous future, there is legitimate question of whether she really has this right.

The second problem is a danger looming for the partisans of principle (1). If a father's right of refusal can easily be trumped by society, then it might well be that a mother's right to an abortion can also easily be trumped. Society might decide, for example, that mothers do indeed have a right to elective abortion, but that social unrest over the abortion issue would be best alleviated by universally suppressing this right. Or perhaps nothing so drastic—maybe the state, in the name of civil accord, could decide that a right to an abortion will be upheld, but severely curtailed by waiting periods, "gag rules," physician lectures, restrictions as to time and reason, and so on. Minimally, the defenders of (1) are compelled to provide some fancy arguing to show that mothers' rights to avoid future duties via abortion are sacrosanct and absolute, whereas fathers' rights to avoid future duties via refusal are the weakest and most *prima facie* of rights.

So appeal to the general social welfare is a dangerous move at best, and a mere trick at worst. I conclude that it does not provide a plausible alternative to the conclusion for which I have argued—that the intentions and desires of the father before the birth of his child are in fact relevant to his duty to provide for the welfare of his children. If the mother can escape future duties to her progeny via the mechanism of abortion, the father also can escape future duties to his progeny via the mechanism of refusal.[15]

Notes and References

[1]Indeed, Beverly Wildung Harrison (1983), in *Our Right to Choose: Toward a New Ethic of Abortion,* Beacon Press, Boston, p. 7, defines feminism as "the contention that women as a group ought to have the same basic standing as 'rational moral agents' as do men, with all the rights and responsibilities attendant to that status."

[2] N.B.: The duty stipulated in principle 3 is a transferable one. The parents may decide to give the child up for adoption, and thereby transfer the duty of support to someone else willing to accept it. Such transference would constitute a morally permissible discharge of duties. So it is clear that 3 does not insist that the parents *personally* provide support for the child. Support is provided, and 3 satisfied, if someone else is found who will personally support the child.

[3]For some discussion, *see* Jeffrey Blustein (1982), *Parents and Children*, Oxford University Press, Oxford.

[4]With the right qualifiers, of course. The duties are specifically parental ones, and the right is dated—i.e., it can only be exercised during pregnancy. But these niceties are irrelevant to what follows.

[5]A defense of this can be found in Heather J. Gert, "Viability," presented at the 1991 meetings of the Eastern Division of the American Philosophical Association. I believe that sympathy for the view can be found in Mary Anne Warren, "On the Moral and Legal Status of Abortion," reprinted in Joel Feinberg, ed. (1984), *The Problem of Abortion* 2nd ed., Wadsworth, Belmont, CA, *see* especially p. 117.

[6]An example of this kind of argument can be found in Rosalind Pollack Petchesky (1984), *Abortion and Woman's Choice: The State, Sexuality, and Reproductive Freedom*, Longman, New York, pp. 354–356.

[7]For some criticism of this, *see* Wesley D. H. Teo (1975), Abortion: the husband's constitutional rights, *Ethics* **85,** and George W. Harris (1986), Fathers and fetuses, *Ethics* **96**. But note the US Supreme Court's ruling in *Planned Parenthood of Missouri v. Danforth, Attorney General of Missouri* (428 US 52 [1976], majority opinion by Mr. Justice Blackmun), reprinted in O. O'Neill and W. Ruddick (eds.), Oxford University Press, Oxford: The mother is allowed to make a unilateral decision regarding the disposition of the fetus "since it is the woman who physically bears the child and who is the more directly and immediately affected by the pregnancy." p. 68.

[8]Petchesky, p. 354, thinks that biology prevents the having of equal rights. She does not discuss whether striving for equality as an ideal is a laudable goal.

[9]It is hard to find defenses of this principle, since it is so widely assumed. Acceptance of it is implicit in, for example, C. R. Castner and L. R. Young (1981), *In the Best Interest of the Child: A Guide to Child Support and Paternity Laws*, National Conference of State Legislatures; Carol Smart (1987), There is of course the distinction dictated by nature: law and the problem of paternity, in *Reproductive Technologies*, Michelle Stanworth (ed.), University of Minnesota Press, Minneapolis; L. M. Purdy (1976), Abortion and the husband's rights: a reply to Wesley Teo, *Ethics* **86**; Alison Jaggar (1984), Abortion and a woman's right to decide, in R. Baker, and F. Elliston (eds.), *Philosophy and Sex,* Prometheus Books, Buffalo; and Francis J. Beckwith (1992), Personal bodily rights, abortion, and unplugging the violinist, *Int. Philos. Quart.* **32,** esp. pp. 111,112. In "Fathers and fetuses" Harris may reject this principle; at least, he rejects something similar to it. But his project is different than mine, and he does not discuss paternal obligations in any sustained way.

[10]Harris offers an interesting defense of this in "Fathers and fetuses."

[11]Citing statistics showing that many fathers are noncompliant with respect to mandatory child support is irrelevant here. Rejection of principle 4 means that it can often be wrong to demand a father to provide support in the first place.

[12]Judith Jarvis Thomson, "A defense of abortion," reprinted in Feinberg, *The Problem of Abortion*, p. 184.

[13]This analogy gains additional momentum for those who consider corporations to be moral persons.

[14]Most famous is, of course, Thomson, but *see also* Jane English, Abortion and the concept of a person, reprinted in Feinberg, *The Problem of Abortion*, pp. 151–160.

[15]This chapter is the result of conversations with Timothy Johnson, a physicist who should have been a philosopher. It could not have been written without his insight. I am also indebted to David Blumenfeld, Susan Hales, and Steven Rieber for lengthy and helpful discussions about this topic, and to Stephen Beck, Angelo Corlett, James Dreier, Michael Ialacci, and George Rainbolt for criticisms of earlier drafts.