

More on Fathers' Rights

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I am grateful for the opportunity to clarify my position on paternal rights and to rebut the criticisms leveled by Professor Humber. To briefly restate my basic position, I regard a woman's right to an abortion as a morally permissible way of avoiding certain future duties with respect to parenting. For fathers I argue for a right of refusal as a morally permissible way of avoiding certain future duties with respect to parenting. In principle (1) I offered a very liberal reading of this right—that women may get abortions at their discretion for basically any reason. I presented an extreme version of this right for dialectical purposes, in the hopes that my basic argument would be most clearly delimited by a simplistic version of (1). The only thing really crucial in (1) is the clause that women may make unilateral decisions as to whether to abort. In all other respects (1) can be abridged with no damage to my central thesis. Perhaps in the best future theory about abortion it will turn out that we need assorted qualifications and restrictions on abortion rights; qualifications having to do with whether the mother has made binding commitments to others with respect to the disposition of the fetus, when (if ever) the fetus becomes a person, the motives of the mother, and so on. These qualifications can be written into principle (1) without harm to my claims about the rights of fathers. A father's right of refusal will just be qualified analogously.

Unfortunately, this strategy seems to have misled Humber. He thinks that one plausible interpretation of my view is that a right to abort entails some absolute right to avoid future parental duties at any time. Thus Jane Doe, possessing a right to abort at six weeks of pregnancy that she does not exercise, therefore possesses a right to ignore her child after it is born. Humber is right about one thing—if my account is committed to this, it is absurd. However, I am not committed to this. The right to avoid future duties is a *dated* right, and can only be exercised during pregnancy, something I said explicitly in Note 4. So Doe's attempt to avoid duties to her child after the child's birth is wrong. Plenty of rights are dated in this way. To give one example, my legal right to vote is a dated one—I cannot vote after the election has passed, nor can I vote three months in advance.

Humber thinks that another worthwhile interpretation of my position is that a woman has a right to abort only if she desires the abortion as a means of avoiding future duties. Thus Frankie Fae, who wishes to abort her Down syndrome fetus on the grounds that the abortion “is in the best interest of the fetus,” may not permissibly do so. Humber correctly points out that such a restricted conception of abortion is unlikely to satisfy abortion liberals. However, my account is in no way committed to this narrow view. I suppose that abortion is a morally permissible way of avoiding certain future parental duties. This does not entail, as Humber apparently thinks, that abortion is *only* morally permissible when it is done with the intent of avoiding future duties. I assume that abortion is an acceptable mechanism of avoiding future duties, just as an opposable thumb is a grasping mechanism. If I use my thumb to stir my coffee, this does not show that the thumb is not a grasping mechanism. Likewise, if Fae uses abortion in the interests of the fetus, this does not show that abortion is not an acceptable mechanism of avoiding future duties.

From an overly narrow construal of my view Humber then swings to an extremely wide one. He suggests that my “position might be that... women have a right to use abortion as a mechanism for achieving *any* goal that they find desirable,” and then

trots out the villains Jenny Joe and Robin Roe as counterexamples to my ostensible view. Humber's contention that the wide view is false is plausible, and shows that some qualifications will have to be built into principle (1). This is hardly surprising and totally innocuous. I noted earlier that (1) was bluntly formulated to make my subsequent arguments simpler and clearer, and building in the qualifiers Humber suggests does no harm to my central theses. That abortion is a morally permissible way of avoiding future duties implies nothing about the permissibility of using abortion to accomplish other goals, whether they be benefiting fetuses, avoiding morning sickness, ensuring a male child, or causing pain to others. The moral permissibility of accomplishing these other goals through abortion will have to be considered on a case-by-case basis.

Humber goes on to claim that if women are allowed to achieve goals x, y, and z by means of abortion, then it does not follow that they have a right to these goals. Particularly, even if a woman is allowed to avoid future duties by means of abortion, this does not entail that she has a right to avoid future duties. If Humber is thinking of liberty rights, then I find this assertion strange in the extreme. To say that someone is morally allowed to do X is to say nothing other than they are at moral liberty to do X. But to say that someone is at moral liberty to do X is equivalent to saying that they have a liberty right to do X. So being morally allowed to avoid future duties by means of abortion certainly does mean that you have a (liberty) right to avoid future duties (by means of abortion). It is precisely this right that I assume women possess. The analogous right I defend on behalf of men is a (liberty) right to avoid future duties (by means of refusal).

The most interesting argument Humber gives against my view is his handicapped analogy, which merits a detailed response. His argument goes like this. Pregnant women are analogous to disabled persons. Pregnant women are faced with "morning sickness, doctor visits, doctor bills, work related problems, dietary restrictions, discomfort, dangers to the mother's health, and so on." These burdens are similar to the ones faced by disabled per-

sons, who have difficulty traveling, "competing for jobs, shopping outside the home, or contributing to society in any way that requires a great deal of mobility." Men are analogous to abled persons. The former do not have the burdens of pregnant women, and the latter do not have the burdens of the handicapped. Society has provided the benefit of special parking spaces for handicapped drivers. Despite the fact that this benefit tends to impose burdens on the nonhandicapped (e.g., they sometimes will have to park hundreds of yards away from shelter even when there is an open handicapped space), no one thinks that special parking rights for the handicapped are unjust. By parity of reasoning, no one should think that granting women a special right to avoid future duties (through the mechanism of abortion) but not granting men such a right (through any mechanism) is unjust. At least this seems to be his conclusion. He writes that "granting pregnant women a right to terminate their pregnancies clearly provides them with a means... for achieving certain benefits. However, this is an unintended and necessary consequence of ascribing the abortion right to pregnant women." Surely his second sentence is a misstep. Realization of these benefits is the entire motivation for caring about a right to abort, just as the motivation for parking rights for the handicapped is the realization of the benefits of not having to walk far, and so on.

This argument has several difficulties. The first is that the case of the handicapped is not genuinely analogous to pregnancy. To really make them analogous, we will have to imagine that every handicapped person in America could legally pay a few hundred dollars, undergo a low-risk surgical procedure, and thereby become completely able-bodied. The only handicapped people that would be left would be those that freely chose to remain handicapped, or those that could not afford the operation. We also need to suppose that no one is ever handicapped longer than nine months, even if they do not get the operation. At the end of nine months the disabled can give their handicap to the state and return to being able-bodied. Under these conditions—handicaps are always temporary and may be removed with a

medically minor operation—would we still feel compelled to provide special parking spaces? I doubt it.

Humber thinks that in the actual world the burdens and benefits accruing to the handicapped and nonhandicapped drivers are balanced out by granting handicapped drivers special parking rights. I grant this for the sake of argument. He also thinks that the burdens and benefits accruing to men and women are balanced out by granting women but not men a right to avoid future duties. This I deny, and argued against in my original paper. These arguments bear further elaboration. There are two types of burdens faced by the mother that Humber discusses: those associated with pregnancy, and those associated with childrearing. Let us consider them in reverse order.

The scenario imagined is that of an absentee father, who would have preferred that the mother get an abortion, and now grudgingly sends money under court order, and that of a hands-on mother who wanted the child and now must deal with all of the issues involved in raising it. Humber argues at length that the father's burden of child support is "paltry" compared with the burdens of childrearing faced by the mother.

The problem is that what Humber considers to be the burdens of childrearing shouldered by the mother are burdens in a loose sense only. Strictly speaking, they *are not properly considered harms or burdens at all*. The mother volunteered to support and raise the child by having it and keeping it, when she could have had an abortion or given it up for adoption instead. She freely chose the consequences of childrearing, presumably with fair knowledge of what these would be. Under the widely held principle that where there is consent there is no harm (the *volenti* maxim), these "burdens" of childrearing are not rightly considered harms, and she is not entitled to any redress for them. In short, the mother not only knew what she was getting into, but asked for it. The father, on the other hand, did not volunteer for anything having to do with the child and was coerced by the state to pay child support. Therefore his coerced support is a burden on him.¹ Thus the father is burdened and the mother is not—which seems manifestly unfair.

Humber's other account of maternal burdens focuses on pregnancy. Even though many women view pregnancy as a desirable state and a worthwhile experience (especially by those who intentionally continue with their pregnancies, as in the case we are imagining), I will provisionally grant Humber that it is a burden. The burden faced by the father is 18 years of child support. There are two problems. First, the father's burden is 27 times as long as the mother's, so it is pretty hard to see how imposing such a duty on the father constitutes just compensation for the mother. Second, again, the mother freely decided to continue with the pregnancy when she could have aborted and under the *volenti maxim* she deserves no redress.

To help illustrate this, let us consider an analogy to the handicapped more accurate than Humber's. Suppose Clark and Melinda are out driving—specifically, Clark is driving and Melinda is his (willing) passenger. As they cruise along, Clark nonculpably totals the car into a telephone pole (we can imagine that the roads are icy, or that the brakes failed). Clark is unhurt, but Melinda is temporarily paralyzed from the waist down. Given routine medical treatments and physical therapy, Melinda will be back to normal within nine months. Given more controversial medical treatments that cost a few hundred dollars more, she can be back to normal in a couple of weeks. Clark and Melinda both knew that driving is a risky activity, ice tends to form on road surfaces, and that brakes sometimes fail, and yet they both voluntarily chose to undertake the risk. It is certainly unfortunate that Melinda was injured, but I do not think that we want to say that it was unjust. Nor does it seem reasonable to write laws allowing Melinda to sue Clark and attach his wages as compensation for her injury. It does not become more reasonable even if we strengthen the analogy to pregnancy. Suppose that Clark is in fact Clark Kent and cannot be injured in car crashes, just as men cannot become pregnant. His invulnerability does not suddenly make him culpable for the accident or morally responsible for Melinda's condition. Let us imagine further that Melinda eschews modern medicine (on religious grounds, say) and refuses both the

routine medical treatment as well as the extraordinary one and so remains a paraplegic for the next 20 years. Even adding this parameter does not obligate Clark to support her or somehow make him liable for her paralysis. Indeed, I think we would consider it supererogatory of him to send her part of his paycheck every month.

The key feature in this case is choice. Melinda chose to run certain risks and chose to reject or accept certain medical treatments. It seems to me that this issue of choice is an important one for abortion liberals. Abortion, they say, should be allowed to provide women a choice in whether they become mothers even after they have become pregnant. We must be careful that admitting women a means of making their own reproductive decisions does not entail that they thereby make parental choices for others. This is all I am really arguing for—that men be permitted the same sorts of choices as women, and that no one else be allowed to decide for them whether they shall become fathers in a legal or social sense.

Note

¹One might be tempted to make the blithe rejoinder that he voluntarily had sex and so did know what he was getting himself into. This move is a blunder for anyone hoping to hang on to principle (1) since it plainly paves the way for forbidding abortions—the mother, too, knew what she was getting into when she had sex. Why should she be allowed a way of escaping the consequences when he is not?