

## **Fatherhood and Child Support: Do Men Have a Right to Choose?**

---

**ELIZABETH BRAKE**

**ABSTRACT** *My primary aim is to call into question an influential notion of paternal responsibility, namely, that fathers owe support to their children due to their causal responsibility for their existence. I argue that men who impregnate women unintentionally, and despite having taken preventative measures, do not owe child support to their children as a matter of justice; their children have no right against them for support. I argue for this on the basis of plausible principles of responsibility which have been used to defend abortion rights. I then consider the morally relevant differences between men and women, arguing that while in some cases these differences may justify differential treatment, their import should not be overstated — in many cases, the burden of child support will be too great to impose justly on fathers. This conclusion is not as undesirable as it may seem: I suggest feminist considerations in favour of revising the notion of paternal responsibility and consider alternative arrangements of child support.*

In United States law, establishment of paternity is the primary requirement for securing child support orders [1]. Regardless of the nature of a man's relationship with the child's mother, his intentions in engaging in sex, and his ability to pay, a positive test for paternity provides legal grounds for ordering him to pay child support for up to eighteen years. In this paper, I will argue that "involuntary fathers" [2], men who impregnate women unintentionally and despite having taken efforts to prevent this outcome, do not owe child support to their children; that is, their children have no right against them to support. Whether it is just for the state to compel such men to pay child support that they do not owe is a distinct question, which I will address only in part. My primary aim is to call into question a dominant conception of paternal responsibility, namely, that fathers owe support to their offspring by virtue of their causal responsibility for their having come into existence [3].

Intuitively, it appears that paternal obligations fall along a continuum. Although a man whose sperm has been stolen and used to impregnate a woman is the biological father of the resulting child, it is implausible to say that he owes support to the child as a result of this biological relationship. At the other extreme, a man who has committed himself to parenting a particular child does seem to owe it continued support. But what should we say about a situation between these — that of a man who becomes a father unwillingly, as a result of the failure of his contraception during a one-night stand? In assessing the case that involuntary fathers are morally responsible for their children, I will focus on situations of this type, excluding reckless and intentional procreation from consideration. That is, I will consider only cases in which there were no intentions to procreate and in which pregnancy was the result of contraceptive

failure. This is because I will assess the claim that conceiving a child during sex morally obligates the father to support it and wish to block off other ways in which he could incur responsibilities.

In Section I, I will argue that involuntary fathers are not morally obligated to support their offspring [4]. The main point will be that if women's partial responsibility for pregnancy does not obligate them to support a fetus, then men's partial responsibility for pregnancy does not obligate them to support a resulting child. Taking as a starting-point the claim that women do not owe fetuses rights to their bodies by virtue of having consented to sex, I will extend this point to men by parity of reasoning (I.A). I will go on to consider whether an involuntary father owes child support directly to the mother (and only indirectly to the child) on the grounds that he is responsible for her situation. Here I will argue that the compensation he owes her as a result of his partial responsibility for pregnancy must be limited to expenses of the pregnancy itself (I.B).

In Section II, I will examine whether differences between women and men — in particular, the different burdens involved in carrying out a pregnancy and in making support payments — undermine the parity of reasoning argument. For example, it might be thought that a difference in strength between bodily rights and property rights explains why women are not obligated to support a fetus but men are obligated to support a child. In response, I will note that mandatory child support payments in some cases impose a significant burden upon fathers (II.A). Social differences between women and men might also be invoked against the parity of reasoning argument. For example, women typically experience greater pressure to rear children than do men [5]. Yet this is counterbalanced by considerations such as the oppression undergone by groups of men (II.B).

While sexual differences may indeed distinguish abortion rights from a father's parallel "right to choose" (that is, from a man's putative right to opt out of financially supporting a child) and give special protection to the former, I will argue that we should remain critical of the claim that conceiving a child in sex obligates a parent to support it until its maturity. Indeed, if it is permissible for a parent to give a child up for adoption, this claim is clearly false. The question is why substituting the word "father" for "parent" should make the claim more defensible. In criticism of this claim, I will point out that the conception of parental responsibility underlying strict child support law comports uneasily with unrestricted legal access to abortion. Further, this conception of parental responsibility may also obscure an alternative approach — collective responsibility for the support of children (III).

There are a number of interesting complications which I can treat only in passing. One dimension of accountability, as already noted, relates to the father's attitudes toward the risk of pregnancy: he could have procreated ignorantly, despite his efforts, negligently, recklessly, or deceptively [6]. That is, he could have been unaware of the possibility of pregnancy, he could have used contraception which failed, he could have failed to take precautions because he did not think of it though he should have, he could have been mindful of the risk but proceeded without precaution, or he could have deceived his partner regarding his fertility. The relationship between the sexual partners, especially their expressed intentions, is also relevant to assessments of accountability, but it is not an issue which I will examine here. My paradigm case will be the non-resident out-of-wedlock father whose contraceptives failed during a casual sexual encounter.

My use of a framework of rights may seem unsuitable for the analysis of reproductive responsibilities. To feminist critics of rights-based accounts of reproduction, for example, my argument may simply seem to be a *reductio* of the application of a rights framework to this topic [7]. However, while I use this framework to articulate a problem with a conception of paternal responsibility, that conception is not confined to this framework. Reform of child support law in the U.S. has been accompanied by political statements to the effect that conceiving a child in sex creates obligations for the parents [8]. In this paper, I hope to show that such an expectation is to some extent morally arbitrary and, in some cases, unfair. Thus, even those who dispute my choice of framework may find what follows suggestive insofar as it brings into question the assignment of extensive reproductive responsibilities as a consequence of engaging in sex and, by further implication, the placement of the costs of children primarily on individual parents. These assignments of responsibility and cost are troubling because of their implications for two fundamental issues of gender justice: abortion and the treatment of reproductive labour as private.

## **I. Paternal Responsibility**

### *A. Involuntary Fathers' Obligations to Children*

Judith Jarvis Thomson's paper defending abortion is justly regarded as a classic [9]. It advanced the debate over abortion beyond the issue of the personhood of the fetus and made a number of philosophically penetrating points in so doing. Her paper includes a crucial line of argument which I will take as my starting-point, for it appears to imply that mandatory child support is unjust.

A number of authors have noted this apparent consequence of Thomson's article [10]. Some take it as a decisive objection to her defense of abortion. According to these authors, if Thomson's defense of abortion entails that mandatory child support is unjust, her defense must be flawed. This apparent consequence of her view has been used by pro-life feminists to pose an apparent dilemma for pro-choice feminists: either abortion is impermissible, or mandatory child support is unjust [11]. For example, Keith Pavlischek has argued that Thomson's article entails that fathers have no duty to support their children, and that since this "compromises it [a woman's autonomy] by placing upon her almost insurmountable financial and emotional burdens," (354) feminists should reject Thomson's view and accept parental responsibility, for both men and women, as an obligation of justice [12]. Thomson's defenders have responded to the so-called "Child Support Objection" by attempting to show that her view does not entail the injustice of mandatory child support [13]. In contrast, I will argue that Thomson's view does imply that involuntary fathers do not have a moral obligation of support [14], but that accepting this horn of the dilemma constructed by the pro-life feminists is not so bad — it is, in fact, supported by additional considerations.

In *A Defense of Abortion*, Thomson argued that women who become pregnant as a result of contraceptive failure are not obligated to support the fetus by virtue of their responsibility for its existence — and, I will argue, the same goes for fathers. Recall that Thomson accepted (for the sake of argument) that a fetus has a right to life from conception and then defended abortion by arguing that the fetus does not have a

right to the mother's body unless she has given it such a right. On her view, we typically gain rights against other persons through their voluntary agreement or as a result of some harm they have done us. Thomson argued that women who consent to sex have not thereby given resulting fetuses rights to their bodies; there are limits on one's moral responsibility for the outcomes of one's actions. Even when an outcome is known to be possible, an agent is not always obligated to bear its costs if she has taken steps to prevent it.

Thomson makes this point by giving counter-examples to the principle that we are morally responsible for *all* the foreseeable consequences of our actions [15]. Her most vivid example is that of floating people-seeds which come into our windows and take root in our carpets, despite our best efforts at precautions, such as placing mesh screens on the windows. Surely, she says, we are entitled to uproot the seeds before they mature into persons. This example shows that causal responsibility for someone's existence does not always entail an obligation to support that person. On her view, infants gain rights against their parents when their parents voluntarily assume responsibility for them and not as a result of their parents' causal responsibility for their conception:

Surely we do not have any such 'special responsibility' for a person unless we have assumed it, explicitly or implicitly. If a set of parents do not try to prevent pregnancy, do not obtain an abortion, and then at the time of birth of the child do not put it out for adoption, but rather take it home with them, then they have assumed responsibility for it, they have given it rights. . . . (65)

But if this is correct, it appears that fathers too are only obligated to support their children if they assume responsibility.

If Thomson's example shows that women do not give fetuses rights simply by engaging in intercourse, surely, by parity of reasoning, it also applies to men. If a man has used contraception, disagreed with the mother's decision to bear the child, and generally absents himself from the proceedings, it is difficult to see how he could be said to have assumed responsibility. The fact that in the first case we are dealing with a fetus and in the second a child makes no difference here, since on Thomson's hypothesis, the fetus is a person. Again, the fact that in the first case we are dealing with a putative right to the woman's body (on the part of the fetus) and in the second with a putative right to the man's money (on the part of the child) makes no difference, since the existence of a right should not depend on what the right in question is a right *to*. Admittedly, there are complications. One is the right to self-defense in life-threatening pregnancies. A more important complication is the relative strength of bodily and property rights, which I discuss below [16]. Perhaps it will be objected that the father's obligation should not be construed in terms of a right held by the child, but then it is unclear why he can be legally compelled to discharge this obligation.

Of course, Thomson's is not the only available defense of abortion. A position which denies the personhood of the fetus can avoid Thomson's point about responsibility [17]. If the fetus is not a person, obligations to children are, presumably, a very different matter than obligations to fetuses. And pro-choice feminist positions which argue for abortion on grounds of equality can avoid this view of responsibility [18]. Indeed, Thomson's arguments are contested by other defenders of abortion. Her comparison of women's bodily rights with property rights has been challenged, as has

the view that parental rights are voluntarily assumed responsibilities [19]. But even if parental duties are *not* voluntarily assumed responsibilities, it need not be the case that biological parenthood alone is sufficient for possessing parental duties. The view of responsibility suggested by Thomson's paper is reasonable in certain cases (such as the people seeds); in what follows, I will examine its plausibility in the case of involuntary fathers.

The point that we should not be held morally responsible for all the known possible consequences of our actions is plausible. In common sense morality, taking precautions to avert undesirable outcomes is sufficient to excuse one from blame should those outcomes come to pass. We do not call a careful driver a murderer when the statistically unlikely but always possible comes to pass and she runs down a pedestrian. Thomson's point is important: causal responsibility should not be confused with moral responsibility, nor moral responsibility with an obligation to bear all costs of one's actions. The details, of course, will make the difference here (to borrow Thomson's phrase). But even in the absence of a theory specifying the significance of variables such as the degree of risk, the strenuousness required in preventative actions, and so on, in apportioning costs, there is reason to question whether biological paternity obligates a man to support his child. I will argue that the various plausible explanations of such an obligation are insufficient.

Like the case of involuntary pregnancy, the case of involuntary paternity suggests two possible justifications for an attribution of moral responsibility: the argument from consent to sex, and the argument from causal responsibility. The first argument holds that by consenting to sex in the knowledge that pregnancy may result, the partners waive their rights not to support a resulting being. That is, their consent is tantamount to an agreement to support a resulting being. The argument from causal responsibility also involves the consent of the parties — but here the thought is that by voluntarily undertaking a course of action which leads to the existence of a fetus (or child), the parents are liable for support by virtue of their responsibility for its existence. According to this argument, the resulting being has a right against its parents — but in this case, the right does not depend solely upon their consent to sex, but their causal responsibility for its existence. In this case, they need not be thought to have tacitly consented to waive their rights, but instead to be liable in a way analogous to a negligent driver who is liable for compensation to a pedestrian he runs down [20]. It is precisely these imputations, to women or men, of moral responsibility for a child on the grounds of consent to sex and causal responsibility, which I wish to call into question. Having established the weakness of such imputations, we can go on, in Section II, to investigate special considerations which might serve to distinguish fathers from pregnant women.

To begin, let us consider the argument that consent to sex implies tacit consent to support a resulting fetus or child in the possible although unintended event that one is conceived. One could say of men (as some people say of women and abortion): "They knew when they decided to have sex that they could be ordered to pay child support, so they accepted this risk when they decided to have sex rather than abstain." Since one knows the possible consequences, one's undertaking can be seen as a tacit agreement to bear the costs of those consequences should they occur. But this argument is factually wrong-headed and theoretically unstable. Presumably, some of the fathers under consideration would deny that they ever consented to support a child.

It seems difficult to impute tacit consent to someone who intended to avoid pregnancy, simply because he or she knew of the possibility. This makes a mockery of the notion of consent, since surely consent, to be a meaningful moral concept, must be something more than foresight. If consent is to be understood as an attitude, then this argument is clearly implausible [21].

However, consent is not the only way in which one person can gain a right against another. For example, one can gain a right to compensation when another person negligently inflicts harm on one's person or property [22]. Should I unintentionally harm you by not shovelling the snow from my sidewalk, causing you to fall, I have an obligation of justice to compensate you. The second argument for parental obligation turns on the related idea that parents' causal responsibility for bringing the fetus into existence obligates them to meet its needs. This imputation of obligation indirectly depends on consent to sex — since it matters that the act initiating the relevant causal sequence was voluntary — but adds the further thought that the child's right to support derives from its parents' causal responsibility for its predicament [23]. A first flaw in this argument is that such imputations of responsibility often depend on the agent's either having done something which he ought not to have done or having failed to do something which he ought to have done. Thus, in my example above, I failed to carry out my duty to shovel the snow. It would make a difference if the circumstances were out of my control — a blizzard raged around my house — so that I could not be thought to have a duty to do something about it. A duty to abstain from sex altogether seems overly onerous, so it seems the relevant duty here would be a duty to use contraception [24]. This would seem to reinforce Thomson's point: if contraception has been used, responsibility cannot be imputed. However, perhaps mandatory child support should be modelled on strict liability in law, in which someone engaging in a risky activity automatically assumes responsibility for damages, no matter what precautions they have taken [25].

But I maintain that there is inadequate ground for such an attribution of responsibility to the involuntary father who used contraception. As Harry Silverstein and David Boonin point out, responsibility for someone's existence is distinct from responsibility for their being in need of assistance. A truck driver who runs down a pedestrian is (causally) responsible for the latter's having urgent medical needs. A pregnant woman is only responsible for the fetus' existence, not its neediness: “[t]here was no option available to [the pregnant woman] on which the fetus would now exist and not be in need of her existence” [26]. As the case of doctors who extend lives shows, an agent A's responsibility for B's existence does not imply that B has a right that A do whatever it takes to keep them alive (giving up a kidney, for instance). This seems to apply to the father too: no more than the mother is he responsible for the *neediness* of the fetus or child, and hence surely he is no more obligated to the child by virtue of his partial responsibility for its existence than the mother is to the fetus.

### *B. Involuntary Fathers' Obligations to Their Sexual Partners*

Though a direct obligation to a child does not follow from a man's consent to sex or from his partial responsibility for its existence, an indirect duty to the child derived from a direct duty to the mother might still follow from these factors. Someone might argue that when a man consents to sex, he should foresee that it might result in

pregnancy followed by the woman's decision to keep the child. Due to his voluntary participation in an act which brought about her situation, he has acquired an obligation to aid her in this situation by supporting the child. This is like the argument from causal responsibility above, except here he is arguably responsible for her neediness.

Consider first that we might think that consent to sex involves, within narrow limits, implicitly accepting certain consequences which may result from the other party's subsequent decisions. For example, so long as a couple have made no vow of secrecy, the man cannot complain if the woman tells Oprah Winfrey on air about their activities in bed. In this example, his right to privacy — not to have personal information about himself made public — has been waived, precisely because the woman's right to discuss her activities demands it. If a sexual encounter can create subsequent rights and duties between the parties, we might think that a father acquires a duty to the mother to help support the child as a consequence both of his duty to respect her decision and of his responsibility for her situation.

This objection recalls an important point suggested by pro-life feminism [27]. Consider a woman who strongly opposes abortion on religious grounds. If she becomes pregnant, and the father is unwilling to provide support, she may face a dismal prospect. Her religious beliefs require her to bear the child; whether she gives the child up for adoption or keeps it, the results could be devastating. Her choice between abortion, adoption, and impoverishment is hardly a choice, since she cannot contemplate the first two options. Reproductive autonomy is involved in her right *not* to have an abortion, and the father must respect this decision. Further, someone might argue that the father owes her support as a consequence of his partial responsibility for the hardship she faces.

Women should not be left without realistic alternatives to abortion. But just as this does not show that abortion is immoral or should be illegal, it does not show that the father has an obligation of justice to the mother and child. (In Thomson's terms, we may think he is callous if he walks away, but that is to say he is uncharitable, not unjust.) Further, let us remember that in this example the man's alleged obligation is to the mother, and only indirectly to the child. Thus, this would not show that he has incurred a responsibility directly to the child simply by fathering it.

The idea is that the father is morally responsible due to his causal responsibility for his partner's bearing certain costs. Note that his alleged responsibility to share the costs of rearing the child cannot be explained merely as a consequence of respect for her choice. The conclusion requires not merely that he refrain from interfering with her choice, but that he subsidize its costs. This could only be supported by an unacceptably strong notion of respect for choice which would produce unacceptable implications if generalized, even if restricted to cases where the exercise of choice involves refusing an invasive bodily procedure. Imagine that you and I play hockey, and despite your best precautions, you injure me. Due to my religious beliefs I refuse to undergo the simple surgery which would cure me, and I become paralysed. It would be nice of you to subsidize this choice, but I do not think you would have a duty to pay the exponentially greater costs incurred by my decision. Respecting my freedom of choice does not generate a duty to pay for the costs of its exercise by those with whom we interact. Indeed, if this argument is understood merely in terms of respect for choice, the involuntary father might complain of inequity in law: while the woman in our example found herself with a painful choice, her sexual partner had no choice [28].

It may be objected that the father's duty to the mother rests not on respect for choice, but on a positive duty of aid. However, such positive duties of aid are not always justly enforceable. We might accept general enforceable positive duties (provision of healthcare, for example) where the cost involved is relatively small (a levy on each tax-payer). We might accept this as a duty of charity because the good to others outweighs our own sacrifice; however, if his sacrifice is significant, this does not apply to the involuntary father. We might also accept enforceable positive duties on the grounds that property rights are overridden when the consequences are great enough, but again, at least in cases of low-income fathers, the consequence of his not making it is comparable to the cost (to him) of his making it (an issue I will discuss below) [29]. If an explanation of why he is *justly* assigned this responsibility cites his consent to sex and his causal responsibility for the child, then, on my argument so far, it would not be a satisfactory response.

However, the father's obligation to the mother arising from his partial responsibility for her situation should be distinguished from a general duty of aid. Since he partially caused her situation, he stands in a morally non-arbitrary relation to the mother vis-à-vis her predicament. To evaluate what he owes her in this case, I will examine obligations between sexual partners attendant on costly consequences of the act. Thus, I will not consider cases in which a man incurs responsibility to support a woman's child by making an explicit contract or by inducing reliance (by leading her reasonably to believe that he will). Nor will I consider cases in which he incurs special duties to her given the nature of their relationship. Fathers may very well incur obligations of support in these ways, but I am interested in cases where these circumstances do not obtain.

Whether or not there are, as some philosophers have argued, *sui generis* duties in sex [30], if one sexual partner causes harm to the other, surely he incurs certain duties towards his partner. For example, sex can transmit disease. If A negligently transmits a disease to B, A arguably has a duty to cover the cost of treatment and to compensate B for harm [31]. These duties might extend to sharing the cost of a pregnancy test or abortion, or costs incurred in pregnancy. The costs which it seems fair to assign here are those of treating or compensating for the harm. If, as a result of catching genital lice, Sam has a nervous breakdown and loses his job, house, and dog, it would not be fair to assign all these costs to Tom, his sexual partner. So long as Tom was merely negligent, he is at most obligated to pay the costs of treatment (and associated costs, such as shampooing the carpets) and compensate for the physical discomfort.

Consider another example which suggests a limit to the costs justly assigned a negligent agent. Say that Sam leads Tom on a hike in his property, entering an area inhabited by bears (Sam should have checked with the Wildlife Advisory Bureau first, but it slipped his mind). Tom is mauled and, being a Jehovah's witness, refuses a blood transfusion. The available corrective surgical procedures which do not involve transfusions are 216 times as costly as a procedure involving a transfusion. This suggests (if you do not think Sam should have to pay for the extra costs) that the negligent agent is not obligated by justice to pay for extra costs arising from the victim's choices (even exercises of religious freedom). To strengthen the point, we could imagine that Tom wants to choose a costlier procedure which will enhance his physique. Surely Sam is only obligated to pay for remedying the harm done, not to help Tom achieve other goals. Of course, this example does not exactly parallel pregnancy. It overstates the responsibility of the father, for it attributes a greater responsibility to Sam, the



property owner. Since pregnancy is not like a disease passed from one party to another, it is closer to a case in which Tom and Sam decide to walk through a national park — both forgetting bear spray or leaving it behind because it is too cumbersome — and Tom is mauled by bears. Then surely Sam has no duties other than immediate duties of rescue. Furthermore, the original example parallels cases of negligence, not failed contraception. Say Sam and Tom went for a walk in a park, and Sam checked with the Wildlife Advisory Bureau, packed bear spray, and loaded his shotgun. Tom was mauled despite Sam's having taken all reasonable precautions. Now it is difficult to see any grounds for the claim that Tom has a right that Sam pay his medical costs [32].

While in cases of failed contraception a man may have a duty to share the cost of a pregnancy test or an abortion, this does not extend to a duty to support a child. Pregnancy, like disease transmission, is a proximate effect of sex; childbirth is determined by further steps, the woman's choice. While the father might be obligated to share the costs immediately incurred as a result of sex, his responsibility comes to an end when she gives birth. If the choice to bear and keep the child is solely the mother's, the *moral* responsibility for its existence seems to be hers alone.

I have argued that if we accept the view that women do not incur responsibilities to fetuses analogous to responsibilities incurred through negligence, we must also accept this, *mutatis mutandis*, of the father. But surely, someone might object, men must be held *responsible* for their actions; fathers must be *responsible*. Child support laws, on this view, compel men to take on a responsibility which some would otherwise shun. But the claim is equivocal. Clearly, one must accept moral responsibility for those consequences of one's actions for which is morally responsible, and one must bear the justly enforceable costs of one's actions. But just what is at issue is whether in fact men *are* morally responsible for certain consequences, and whether they may be justly compelled to bear the costs. On the other hand, the claim could mean that men, like everyone, should exercise the virtue of responsibility by acting with forethought of the consequences of their actions. However, other policies, such as contraceptive education and classes in fathering skills, could encourage the virtue of responsibility in the context of reproduction [33].

So far, I have focused mainly on fathers' moral responsibility. However, the question of whether it is just to compel men to pay child support even if they do not morally owe it is distinct.

## II. Asymmetry?

If abortion is permitted, legally compelling child support might be thought unjust because it creates an asymmetry in legal rights and responsibilities between men and women. Such a system rightly allows women to decide whether to become mothers, but does not allow men to decide whether to become fathers. Such a system allows women, but not men, to avoid the costs associated with children. This asymmetry is reiterated when adoption law allows the mother to put the child up for adoption without consulting the father. The mother can choose to give up the child, thus avoiding responsibility, but the father cannot avoid responsibility if she keeps it [34]. *Prima facie*, this inequity violates the principle that "men and women . . . should have equal legal rights and duties" [35].

One way to make such laws formally equal would be to give the father joint choice in such matters, perhaps leaving the decision to a court in case of dispute [36]. However, such a policy would have the consequence that, in cases of disagreement, a court might order a pregnant woman to bear a child against her will. It is a background assumption of this paper that such an outcome is unacceptable. As Laura Purdy notes in this context, reproductive “sexual differences do make a moral difference” [37]. That women carry fetuses in their bodies justifies giving women, and not men, control over the decision of whether or not to carry a fetus. Laws requiring paternal notification of abortion have been rejected in the U.S. on grounds that the woman’s bodily integrity outweighs the man’s interest in the fetus [38]. But these differences, which justify leaving abortion to the woman’s choice, do not clearly justify the different standards of responsibility for men and women. Allowing the woman to make the abortion decision is justified by her right to control her body. But allowing women, but not men, to avoid the costs of parenthood is not justified by different reproductive roles.

Given the long history of the law’s failure to respect women’s choices, this result is ironic and, one might expect, misleading. We must resist false gender neutrality, the mistake of ignoring important differences between men and women in the name of equality. So far, my discussion of men’s responsibility has ignored the most salient difference: women’s reproductive choices involve control of their own bodies, whereas — once conception has occurred — men’s do not. The different burdens involved in pregnancy and paying child support may be invoked to differentiate men’s moral and legal responsibilities from women’s. In this section, I will critically examine the justificatory power of the relevant differences between men and women.

### *A. Different Burdens*

Unequal treatment of men and women is not unjust if the inequalities respond to morally relevant differences. There are significant differences between pregnancy and paying child support. Pregnancy involves risk to life and health. Its physical, emotional, social and economic burdens are radically different from the burdens of making monthly support payments. Thus, one might argue that forcing women to undergo pregnancies involves much greater burdens than forcing men to pay child support, and hence the former cannot be justified while the latter can. David Boonin suggest this in response to the “Child Support Objection”: since “the nature of the burdens involved . . . is fundamentally different,” it does not follow from the man’s duty to pay support that the woman has a duty to the fetus [39].

We should distinguish two questions which this difference may illuminate. The first is whether the father has a moral obligation to the child. The different burdens may undermine the parity of reasoning argument made above. The second is whether mandatory child support is unjust because it treats men and women unequally. The different burdens suggest a way to justify an asymmetry in legal rights, without establishing that the man does indeed have a moral duty. This raises the related question of whether it is unjust to compel men to pay child support if they do not owe it.

I will begin with the moral question. At a first pass, it is unclear how the difference makes a moral difference. If parents have incurred a responsibility to support, the mode of support should not make a difference. In Thomson’s analysis, different burdens should not make a difference to obligations of justice: even if Henry Fonda only had to

walk across the room to save your life, that would not give you a *right* that he do so. The difference in burdens is relevant to duties of charity, but the existence of a right does not depend on how easy it is to honour. Since rights issue from certain kinds of interactions, the important thing is whether one of the relevant interactions occurred.

This initial response is complicated by moderate deontology [40]. A theory of threshold rights — rights which can be overridden to avoid certain harms — will make a difference, since the father's rights may be overridden by the child's needs. A moderate deontological view might hold that property rights can be overridden at a much lower level than bodily rights, and hence explain the asymmetry. But note that if giving a child for adoption is permissible, then the child does not have a right against the mother's property, and so the difference in bodily rights and property rights will not justify the child's having a right against the man's property. Someone might object that the mother has already contributed a great deal and so does not owe more, whereas the father has done nothing. But imagine that the mother could effortlessly transfer the embryo to a mechanical womb; in such a case, her contribution would be more like the father's, yet, I think, she would not have an obligation to continue contributing support.

As an argument for the justice of legally compelling the father to pay, the different burdens argument ignores the realities of many men's lives. This argument says: "It would be wrong to compel a women to undergo a pregnancy, since this would interfere with her bodily integrity. But forcing a man to make payments does not interfere with his bodily integrity; whatever it interferes with is less important, so much less important that it is justifiable to interfere with him in this way." I have pointed out already that the mere difference does not show that the man has a responsibility. Further argument, such as is found in moderate deontological positions, is required. But I also want to suggest that this argument overstates the difference. It seems to suppose that it is easy to get the money to make child support payments. Clearly, different women experience very different burdens in pregnancy, and different fathers will find it more or less easy to make such payments. It is not easy to make a general comparison. But such payments might burden a man seriously physically, emotionally, and economically, depending on his occupation and earnings. Given that payments may be required for almost twenty years, that they might make it difficult for him to start a family or pursue other important plans, and that some occupations involve physical risk, the burdens of mandatory child support and of pregnancy might sometimes be comparable. It seems difficult to justify a general claim that the burdens of pregnancy are always greater than those of working overtime for eighteen years in a risky environment — or, for a chronically unemployed man under a system of stringent enforcement, those of destitution, possible imprisonment, and mounting arrears [41].

Perhaps it is wrong to suggest that the burdens are comparable [42]. However, it is enough for my argument that the costs of involuntary fatherhood are, in some cases, unacceptably high to impose on someone. They do not need to be comparable with the costs of undergoing an unwanted pregnancy. They need only be great enough that imposing them on a man can be a violation of his rights. After all, the issue is what costs may be justly assigned to an individual. Further, although the experience of unwanted pregnancy may be uniquely unpleasant, something comparable might be found in the experience of an oil-field worker or welder or other laborer undergoing constant physical discomfort and feeling, "I am just a resource for this child. A good

percentage of my labor does not benefit me; it is like slavery. And I face another seventeen years of this, with no chance to better myself" [43]. This man might not feel invaded, but he certainly might feel pain, despair, and exploitation.

But, someone may object, it is not merely the difference in burdens which justifies the asymmetry, but the relation of the different kinds of burdens to autonomy. Laws compelling women to carry out unwanted pregnancies would prevent them from making important choices about their bodies, choices central to their autonomy. Individuals have a right to make decisions about private matters of great importance. Settling one's beliefs about the moral status of the fetus, and what one wishes to happen to one's body, are central cases of such rights [44]. Plausibly, coercing someone to undergo pregnancy threatens her autonomy by usurping her ability to make important decisions concerning her body and how to live. Forced pregnancies can have further effects on other areas of a woman's life such as her work, her relationships, and her place in her community. Forced transfer payments, it might seem, do not violate autonomy as forced pregnancies do, because rights to property are less central to autonomy than rights over one's body. But again, it is not sufficient that there be a difference in the importance of bodily rights and property rights, but the difference must be big enough so that property rights are not important components of autonomy. And in the case at issue, this is not plausible. In some cases, compelling men to pay child support may limit their choice of occupation, compel them to undergo harsh labour or risk harm (when, for example, only risky jobs pay enough), and burden other important choices [45]. In some cases, compelling child support may unacceptably diminish men's autonomy.

It might be objected that no one is compelling such men to work at low-paying, high-risk jobs; those just happen to be all that are open to them. Prohibiting abortion, on the other hand, would compel pregnant women to undergo pregnancy since they would have no legal alternative [46]. A man can choose how to carry out his obligation, whereas a pregnant woman cannot; she cannot, after all, transfer the fetus to a mechanical uterus. Indeed, this non-transferability might explain the greater importance of bodily rights relative to property rights. However, for men whose only option is to work at low-paying, high-risk jobs, mandatory child support payments can be a substantial burden. Compelling them to pay support is less restrictive than compelling women to undergo pregnancy; but their burden is not negligible. Mandatory payments may be just only when they do not impose a significant burden; a just law of child support (assuming that it can be just to compel people to pay what they do not morally owe) must be responsive to the economic situation of individual fathers.

### *B. Feminism and the Social Context*

Some feminists have taken issue with accounts of abortion which exclude consideration of the social context of inequality or the reality of sexual difference. Appeals to reproductive autonomy mask, on this view, the real importance of abortion to women's equality [47]. I have argued that appeals to differences in reproductive biology are insufficient to justify imposing child support costs on men, since for some men the costs imposed by mandatory child support are, if not comparable to the burdens of an unwanted pregnancy, unacceptably high. But the significance of biology in moral and political questions has much to do with how it is interpreted in a social context. The

distribution of wealth, earnings, and employment opportunity between men and women and the expectations and pressures placed on them regarding sex and reproduction are part of the relevant social context and might justify the asymmetry.

A first difference which might be invoked relates to sex. As MacKinnon notes in her discussion of abortion, women are often pressured into sex. Social conditioning or direct pressure to submit may invalidate consent to sex [48]. To put this another way, men control women's sex lives, and unwanted pregnancies are the result. But it is not easy to tie such social pressures to the responsibilities of individual fathers. Even if men as a group pressure women into sex, this does not entail that any individual fathers are liable for the costs, since there are differences in responsibility among individual men. If women's consent to sex were truly invalidated, the moral obligation on the father would be more straightforward [49]. But there are well-known difficulties with taking even oppressive social pressures to invalidate consent: for one thing, far too many relations will not count as consensual [50]. Moreover, the pressures on women to submit to sex include factors such as economic inequality, for which individual men are normally not responsible with respect to their female sexual partners.

Not only are some women pressured to consent to sex, some women are pressured to be mothers. Once pregnant, the difficulties of abortion access — geographical, financial, and legal — might compel them to bear the child. Many women are also pressured by their families, peers, and religions not to abort. Further, women who rear a child face a double duty — not only have they undergone pregnancy, they now have the responsibilities of a primary care-giver, involving labour and financial costs. Not only will they have greater expenses, but child-care will likely impose constraints on their work life. In fact, an absentee father's contribution could only compensate for a small percentage of these costs.

Given such inequalities, one might be tempted to agree with Claudia Mills' analysis: because it is usually *women* who decide to keep children, allowing men to avoid responsibility would perpetuate oppression [51]. Given gross inequalities in distribution of wealth between men and women, it is crucial to promote equality. I concede that forcing men to pay child support is not the worst of possible evils. For example, the starvation of children seems clearly worse than forcing their fathers to support them, so long as this will not result in anyone else starving. However, there are a number of considerations which should give feminists pause in considering mandatory child support. Most significantly, the dilemma between male support and female poverty is a false one: it overlooks the real, and perhaps independently required, alternative of significant state support. Moreover, mandatory child support programs, unless carefully structured, may reinforce existing forms of oppression, such as racial or class oppression, to which men are subject and which intersect with women's oppression.

First, it is not clear that an obligation of involuntary fathers toward their offspring can be derived from the goal of equality. The promotion of equality should not unfairly assign costs among individuals. Strong affirmative action policies are justified only if, among other things, the rejected candidate had no right to the job. Similarly, promoting equality through child support law will be defensible only if the father has an enforceable obligation of support to the child (or the mother), as I have argued that — in many cases — he does not. If this is right, then it seems arbitrary and unjust to compel child support from such men, instead of from the wider society, in order to promote equality.

Second, the brief feminist analysis I have given ignores the oppression undergone by groups of men. Enforcing child support payments may perpetuate unequal distributions structured by race or class [52]. When poorer men are forced to make these payments, their chances for upward mobility may be seriously reduced. The significant number of low-income involuntary fathers should make us reconsider the argument from women's oppression, since many of these men themselves belong to oppressed groups. Addressing one kind of oppression at the cost of reinforcing another is not a just or stable strategy. A well-designed system of mandatory child support would show greater sensitivity to differences in men's ability to pay [53].

Some feminists might argue that we need to consider the sorts of relationships we want in a society. It doesn't matter that it is so difficult to prove that fathers have an obligation; indeed, the most important relations between people — between spouses, family members, friends — are not primarily characterized by justice. The state should promote certain kinds of interrelation, and child support law steps in where this is absent [54]. Mandatory child support structures our ethical life. However, such virtues should not be compelled, and, indeed, lose their value if they are [55].

Moreover, feminists have other reasons to beware the justifications given for child support law. At the level of public discourse, the concept of parental responsibility remains a refrain in arguments against abortion. Underlying this often seems to be a moralistic condemnation of sex which feminist theorists have argued is often linked with misogyny [56]. Further, feminist goals might benefit from a conceptual separation of sex and reproduction. While Callahan and MacKinnon worry that consequence-free sex benefits men at women's expense, I worry that linking sex to its "natural" procreative function reinforces the identification of women with their "natural" roles as mothers. The apparent attribution of prescriptive significance to the "natural" in public discourse could have significant implications, especially since apparently private arrangements are shaped by law. Such concerns, I think, merit further scrutiny (elsewhere) [57].

### III. Conclusions and Strategies for Change

I have argued that there are no plausible grounds for attributing moral responsibility to involuntary fathers and that even if they have a defeasible responsibility, it may in many cases be defeated by the burden on them. In conclusion, I will review some intuitions about paternal responsibility. There seem to be clear cases where men are obligated to support their children, and clear cases where they are not. As an example of the latter, imagine that a scientist obtains sperm from an unwitting man under false pretexts and uses it in an artificial insemination procedure. Or indeed, think of sperm donors! A *genetic* account of parental obligation cannot make sense of these cases [58]. Nor is it clear that the man's consent to sex makes a relevant difference. If someone were to seduce a man in order to procreate while deceiving him about her intentions, the case would not be very different from that of the male victim of the imaginary scientist [59]. Defenders of abortion are well-advised to resist the idea that consent to sex implies tacit consent to anything more (for example, to a steady relationship, or to continued sexual access, or to different sexual acts, and so on). We have already examined difficulties with the *causal* account of parental responsibility; but the permissibility of adoption seems a decisive objection against it. (Specifying the exact notion of

cause raises difficulties too, especially when we begin to consider artificial reproductive technologies) [60].

At the other end of the continuum, imagine that a woman becomes pregnant at her partner's wishes and makes a number of sacrifices to do so. When the father has assumed responsibility, or induced reliance, he seems to have an obligation — both to the woman and the child! The *voluntarist* account of parental responsibilities as arising from the assumption of responsibility for a child seems to fit with common intuitions [61]. In the middle of the continuum are cases of involuntary fatherhood in which the man has taken reasonable precautions and has not assumed responsibility. I have tried to show difficulties with arguments purporting to show his obligation and to suggest that in the absence of any special responsibility on his behalf, it would be wrong to compel him to support *at least when this would place a significant burden on him*. Perhaps it is not always wrong to compel people to pay things they do not owe. But requiring someone to sacrifice a great deal for another requires considerable justification. Again, a well-designed law of child support should take into account the benefit to the mother and child and the real costs to the father.

What practical import does my argument have? Speaking to the issue of responsibility, I earlier suggested that the *virtue* of responsibility could be taught through moral education; in particular, reproductive responsibility could be taught in sexual education classes including modules on contraception and childcare. Most importantly, we should review the hidden assumption about parental responsibility which produced the dilemma between abortion rights and mandatory child support. This assumption is that the costs of raising children are justly assigned to the individual parents. There is a substantial body of literature on children as a public good and collective responsibility for children [62]. In the short term, I suggest that attention be given to designing a child support law reflective of fathers' ability to pay; [63] in the long term, I suggest that political efforts focus on securing substantial state funding for children, not on creating even more stringent child support laws [64].

*Elizabeth Brake, Philosophy Department, The University of Calgary, 2500 University Dr. NW, Calgary, AB, T2N 1N4, Canada.*

## NOTES

- [1] For the history of U.S. child support law, see the *Green Book* (2000), Background Material and Data on Programs within the Jurisdiction of the Committee on Ways and Means, (Washington, DC, Government Printing Office), Section 8: Child Support Enforcement Program; or WONG, P. (1993) *Child Support and Welfare Reform* (New York, Garland Publishing, Inc.), Chapter 2. The 1988 Family Support Act established paternity establishment quotas, universal child support standards, and income withholding for child support payments. The 1996 Personal Responsibility and Work Opportunity Reconciliation Act strengthened child support enforcement by creating a national new hire reporting system to track absent parents, increasing penalties for non-payment, and establishing procedures for requiring genetic tests to establish paternity.
- [2] Throughout, I will use 'father' in the biological, not the social, sense.
- [3] 'Responsibility' is ambiguous; in this paper I focus on the conception of paternal responsibility according to which a father's partial causal responsibility for the existence of a child gives that child a right against him for support, or, in other words, the idea that his causal responsibility entails a moral obligation of support.
- [4] By 'moral obligation' here I mean an obligation corresponding to a right on the part of the child; a father may also be morally required by charity to support a child, without the child possessing a right to his support.

- [5] And this has great costs for women: on poverty and single motherhood, see OKIN, S. M. (1989) *Justice, Gender, and the Family* (New York, Basic Books), pp. 160–7.
- [6] Thanks to David Archard for this point.
- [7] Thanks to Sue Sherwin for this helpful criticism. I have in mind especially feminist critiques of rights-based accounts of abortion, such as Mackenzie, C. (1992) ‘Abortion and Embodiment’, *Australian Journal of Philosophy*, 70, 2, pp. 136–55; Catharine MacKinnon’s criticism of the subsumption of abortion rights under privacy doctrine in ‘Abortion: On Public and Private’, in MACKINNON, C. (1989), *Toward a Feminist Theory of the State* (Cambridge, Mass., Harvard University Press), pp. 184–94, or in ‘Privacy v. Equality: Beyond Roe v. Wade’, in MACKINNON, C. (1987) *Feminism Unmodified: Discourses on Life and Law* (Cambridge, Mass., Harvard University Press), pp. 93–102.
- [8] See Wong (fn. 1), Chapter 1.
- [9] THOMSON, J. (1971) ‘A Defense of Abortion’, *Philosophy and Public Affairs*, 1, 1, pp. 47–66; see pp. 57–58.
- [10] PAVLISCHEK, K. (1993) ‘Abortion Logic and Paternal Responsibilities: One More Look at Judith Thomson’s “A Defense of Abortion”’, *Public Affairs Quarterly*, 7, 4, pp. 341–361; and BECKWITH, F. (1994) ‘Arguments from Bodily Rights: A Critical Analysis’ in F. BECKWITH and L. POJMAN (eds.) *The Abortion Controversy* (Boston, Jones and Bartlett Publishers), pp. 155–75, adduce this implication in arguments against abortion. Steven Hales uses it to argue against child support: HALES, S. (1996) ‘Abortion and Fathers’ Rights’ and ‘More on Fathers’ Rights’ in J. HUMBER and R. ALMEDER (eds.) *Reproduction, Technology, and Rights*, Biomedical Ethics Review Volume 13 (Totowa, New Jersey, Humana Press), pp. 5–26, 43–9. James Humber responds to Hales in ‘Maternity, Paternity, and Equality’ in the same volume (pp. 27–41).
- [11] Pro-life feminism is the view that legal abortion conflicts with feminist goals such as women’s equality and non-violence. A central claim is that permissive abortion laws sanction male irresponsibility to women’s detriment. For an influential statement of this view, see CALLAHAN, S. (1986) ‘Abortion and the Sexual Agenda’ *Commonweal*, 25 April, pp. 232–38, esp. p. 236.
- [12] Strikingly, Pavlischek does not consider other social and economic arrangements which disadvantage women, such as the lack of state-funded childcare, discrimination in employment against primary caregivers, and the unequal distribution of property between men and women. Pavlischek also adduces the alleged implications of Thomson’s view of responsibility as evidence for “the claim made by some pro-life feminists that the abortion mentality simply reaffirms the worst historical failings, neglect and chauvinism of males.” (343) This goes too far: even if Thomson’s argument does imply that involuntary fathers are not responsible for child support, the fact that it does so does not support the claim that permissive abortion laws “reaffirm” male irresponsibility. I doubt that even philosophers who read and agree with Thomson thereby have a weakened sense of responsibility. No doubt psychologists and sociologists have much to say about this, and I leave that to them.
- [13] David Boonin responds to Pavlischek and Beckwith in BOONIN, D. (2002) *A Defense of Abortion* (Cambridge, Cambridge University Press), pp. 246–54, and in BOONIN-VAIL, D. (1997) ‘A Defense of “A Defense of Abortion”: On the Responsibility Objection to Thomson’s Argument’, *Ethics*, 107, 2, pp. 286–313, at fn. 4, p. 289.
- [14] As David Boonin points out, this does not settle the question of the justice of child support law, since it may be just to compel people to make sacrifices which they have no duty to make, BOONIN (2002), p. 248.
- [15] Michael Watkins encouraged me to read Thomson’s arguments as counter-examples, not analogies: ‘Rereading Thomson’, presented January 14, 2000, to the Auburn Philosophical Society, at Auburn University.
- [16] Relatedly, one might think with Thomson that the fetus has no right at all to support, or that it has a right to support which is overridden by the woman’s right to her body.
- [17] As in WARREN, M. A. (1973) ‘On the Moral and Legal Status of Abortion’, *The Monist*, 57, 4, pp. 43–61.
- [18] Such as those of MacKinnon and Mackenzie (fn. 2). See also SHRAGE, L. (2003) *Abortion and Social Responsibility: Depolarizing the Debate* (Oxford, Oxford University Press).
- [19] For example, by WARREN (1973); thanks to an anonymous reviewer for this point.
- [20] Here I follow BOONIN (2002), pp. 148–50. In contrasting these arguments, he writes that the consent argument challenges Thomson’s claim that a woman does not give the fetus a right to her body merely by engaging in sex, and that the argument from causal responsibility challenges Thomson’s claim that the fetus can only gain a right to the woman’s body through her consent.



- [21] For different and more detailed objections to this argument, see BOONIN (1997), p. 291 and BOONIN (2002), pp. 154–67.
- [22] Again, I follow BOONIN (2002), pp. 148–50, in the comparison with negligence.
- [23] This is essentially Kant's view: by "the act of procreation . . . we have brought a person into the world without his consent and on our own initiative, for which deed the parents incur an obligation to make the child content with his condition so far as they can." KANT, I. (1999) *The Metaphysics of Morals* (originally published 1797) in M. GREGOR (trans. and ed.) *Practical Philosophy*, The Cambridge Edition of the Works of Immanuel Kant (Cambridge, Cambridge University Press), pp. 353–603, p. 430. WARREN (1973) suggests a similar point. For critical discussion, see BOONIN (1997), BOONIN (2002), pp. 167–188, and SILVERSTEIN, H. (1987) 'On A Woman's "Responsibility" for the Fetus', *Social Theory and Practice*, 13, 1, pp. 103–119.
- [24] A duty to abstain from non-procreative sex does not seem overly onerous to everyone — for example, Kant and certain religious adherents. Since the point I am making here is minor, I won't pursue this issue.
- [25] Jeffrey Blustein suggests this in his (1997) 'Procreation and Parental Responsibility', *Journal of Social Philosophy*, 28, 2, pp. 79–86, p. 84.
- [26] BOONIN (2002), p. 171.
- [27] For example, Callahan argues that legal abortion diminishes women's autonomy by creating a social environment in which abortion becomes more convenient than child-bearing, so that many single women effectively cannot keep a child. This argument is flawed: it invokes undesirable consequences to override a fundamental right, ignores other causes of those consequences, and fails to prove that legal abortion contributes to those consequences.
- [28] Also, the man in question might complain that his reproductive autonomy has been violated (if men's reproductive autonomy includes the decision to become a father). For argument, see HARRIS, G. (1986) 'Fathers and Fetuses', *Ethics*, 96, 3, pp. 594–603; and TEO, W. (1975) 'Abortion: The Husband's Constitutional Rights', *Ethics*, 85, 4, pp. 337–42. I think that this point manifests a confusion about reproductive autonomy, but the issue merits further discussion than I can give it here.
- [29] One might also consider whether paying child support can be understood as the 'fair terms' to which reasonable people could agree when they consent to sex. As I will argue below, the cost is too high, and as I argue here, there is an unfair arbitrariness in this assignment of costs.
- [30] The idea being that the essential nature of sex entails a certain set of duties to oneself and others not arising in other contexts. For example, see SCRUTON, R. (1986). *Sexual Desire* (London, The Free Press); NAGEL, T. (1969) 'Sexual Perversion', *The Journal of Philosophy* 66, 1, pp. 5–17; SOLOMON, R. (1975) 'Sex and Perversion' in R. BAKER and F. ELLISTON (eds.) *Philosophy and Sex* (Buffalo, Prometheus), pp. 268–302. See also Kant (fn. 23), pp. 426–7.
- [31] Proposed legislation to hold negligent transmitters of HIV civilly or criminally liable is a striking example of this. In general, the amount of compensation (or punishment) plausibly depends on variables such as foreknowledge, disclosure, and the degree of harm.
- [32] Thanks to Rob Epperson for suggesting this objection and example. The detail of bear spray owes something to DAVID BOONIN.
- [33] Mackenzie (fn. 7) distinguishes decision responsibility and parental responsibility (pp. 140–1).
- [34] But if the mother chooses to give the child for adoption, should the father have first option of taking the child? See SHANLEY, M. L. (1995) 'Fathers' Rights, Mothers' Wrongs? Reflections on Unwed Fathers' Rights and Sex Equality', *Hypatia*, 10, 1, pp. 74–103.
- [35] HALES (fn. 10), p. 6.
- [36] TEO (fn. 28) suggested this in 1975, writing that "the wife is free to choose or reject motherhood while the husband is systematically denied the *equivalent* right to choose or reject fatherhood." On his view, this violates the husband's constitutional right to equal protection.
- [37] See PURDY, L. (1976) 'Abortion and the Husband's Rights: A Reply to WESLEY TEO', *Ethics*, 86, 3, pp. 247–51, p. 249.
- [38] "[I]t cannot be claimed that the father's interest in the fetus' welfare is equal to the mother's protected liberty, since it is an inescapable biological fact that state regulation with respect to the fetus will have a far greater impact on the pregnant woman's bodily integrity than it will on the husband." (Supreme Court of the United States, *Planned Parenthood of Southeastern Pennsylvania et al. v. Casey*, Governor of Pennsylvania, et al., argued April 22, 1992, decided June 29, 1992.)
- [39] BOONIN (2002), p. 249.

- [40] For example, BRENNAN, S. (1995a) 'How is the Strength of a Right Determined? Assessing the Harm View', *American Philosophical Quarterly*, 32, 4, pp. 383–92, and (1995b) 'Thresholds for Rights', *The Southern Journal of Philosophy*, 33, 2, pp. 143–68; and THOMSON, J. J. (1990) *The Realm of Rights* (Cambridge, Mass., Harvard University Press).
- [41] Qualitative and quantitative research on men in such positions can be found in JOHNSON, E. S., LEVINE, A., and DOOLITTLE, F. C. (1999) *Fathers' Fair Share* (New York, Russell Sage Foundation).
- [42] Claudia Mills has argued that the costs of going through an unwanted pregnancy and of being an involuntary father are not comparable; women undergoing unwanted pregnancies cite feelings of bodily invasion which have no parallel in making child support payments. MILLS, C. (2001) 'What Do Fathers Owe Their Children?' in A. BYRNE, R. STALNAKER, and R. WEDGWOOD (eds.) *Fact and Value: Essays on Ethics and Metaphysics for Judith Jarvis Thomson* (Cambridge, Mass, MIT Press), pp. 183–198, p. 186.
- [43] Under the U.S. Child Support Enforcement Program, in which payments are made to reimburse the state for expenditures under Temporary Assistance for Needy Families, a non-custodial father expressed this even bleaker sentiment: "What's money when a mother take the money and do anything other than what she's supposed to be doing? . . . But it's not about the child, not to welfare — it's about the dollar, it's about your salary, it's about you paying the state back their money that they have given your child. It's not about the welfare of the child or the mental status of that child. It's not about that! It's not about you bettering yourself! It's about paying back the white folks, that's what it's about." In JOHNSON, LEVINE, and DOOLITTLE (1999), p. 100.
- [44] A statement of this view can be found in DWORKIN, R. (1993) *Life's Dominion: An Argument about Abortion, Euthanasia, and Individual Freedom* (New York, Alfred A. Knopf), pp. 158–9.
- [45] As noted above, U.S. child support enforcement offsets the costs of welfare claims by single mothers. The fathers targeted are often in the same demographic. Elaine Sorensen's research suggests that up to 25% of non-resident fathers are themselves below the poverty line. She argues that punitive measures disproportionately penalize poorer men. See SORESENSEN, E. (1997) 'A National Profile of Nonresident Fathers and Their Ability to Pay Child Support', *Journal of Marriage and the Family*, 59, 4, pp. 785–97; and (1999) *Obligating Dads: Helping Low-Income Noncustodial Fathers Do More for their Children*, Number 2 in Strengthening Families Series (The Urban Institute); and, with C. ZIBMAN, (2001) 'Getting to Know Poor Fathers who Do Not Pay Child Support', *Social Service Review*, 75, 3, pp. 420–34.
- [46] BOONIN (2002), p. 251. David Archard also made this point in correspondence. This is complicated when penalties for non-payment include imprisonment.
- [47] See PETCHESKY, R. (1990) *Abortion and Woman's Choice: The State, Sexuality, and Reproductive Freedom* (Boston, Northeastern University Press), as well as MacKinnon and Mackenzie (fn. 7).
- [48] See MACKINNON (1987), pp. 60, 95, and references at fn. 7.
- [49] While rapists plausibly are obligated to support a child resulting from rape, it would be odd to subsume this under non-rape cases of paternal responsibility, since the absence of consent makes a difference.
- [50] See WALKER, J. D. (1995) 'Liberalism, Consent, and the Problem of Adaptive Preferences', *Social Theory and Practice*, 21, 3, pp. 457–71.
- [51] Mills (fn. 42), p. 195.
- [52] Research by Sorenson (fn. 45), and Wong (fn. 1), supports this. Using child support enforcement to reduce welfare expenditures (a policy which Wong outlines) contributes to this.
- [53] Legal systems differ in this respect, so the scope of this point may be limited.
- [54] See for example HELD, V. (1999) 'Liberalism and the Ethics of Care' in C. CARD (ed.) *On Feminist Ethics and Politics* (Lawrence: University Press of Kansas), pp. 288–309. This also recalls communitarian arguments, for example SANDEL, M. (1982) *Liberalism and the Limits of Justice* (Cambridge, Cambridge University Press), pp. 32–3 and 169.
- [55] TOMASI, J. (1991) 'Individual Rights and Community Virtues', *Ethics*, 101, 3, pp. 521–36.
- [56] For example, see DWORKIN, A. (1987) *Intercourse* (London, Secker & Warburg) or FIGES, E. (1970) *Patriarchal Attitudes* (London, Faber and Faber). I cannot do justice to such views here, but the topic merits further consideration.
- [57] There are a number of additional considerations which I cannot pursue. First, child support law gives a disincentive for men to acknowledge paternity. By stipulating economic duties the law also ignores other contributions a man can make to his child's upbringing. An interview subject in *Fathers' Fair Share* (fn. 41) says: "You pay to stay out of jail, simple as that. 'If you don't pay us [CSE agency] our money, you go to jail.' It, it destroys [the family]. . . . How in the world can you help if daddy's in jail? 'Cause daddy is not just all about money." (p. 56) Child support law may reinforce a stereotypical bifurcation

- of roles between men and women (which Karen Houle describes as “daddy-as-moneybags, mommy-as-flesh”). Susan Faludi cites a 1989 Yankelovich Monitor study in which the majority of male respondents identified masculinity as the ability to support a family (FALUDI, S. [1992] *Backlash* [New York, Anchor Books], p. 65). If child support law reinforces these roles, this is another reason to reassess it. On this, see also HELD, V. (1979) ‘The Equal Obligations of Mothers and Fathers’ in O. O’NEILL and W. RUDDICK (eds.) *Having Children* (Oxford, Oxford University Press), pp. 227–239. Finally, as Marilyn Waring argues in (1999) *Counting for Nothing: What Men Value and What Women are Worth* (Toronto, University of Toronto Press, 2<sup>nd</sup> ed.), women’s reproductive labour is undervalued in mainstream economics (pp. 22–6, 153–81). From this viewpoint, child support is a pittance in comparison to the costs and labour of female primary care-givers. While this might seem to make compulsory child support fairer, if women’s labour is systematically undervalued, a spot fix in the area of child support will not address the root, and may reinforce the undervaluation if the man’s payment is taken as equal to the woman’s costs.
- [58] The genetic account also fails to explain the moral relevance of genetics. See KOLERS, A. and BAYNE, T. (2001) “‘Are You My Mommy?’ On the Genetic Basis of Parenthood”, *Journal of Applied Philosophy*, 18, 3, pp. 273–86. For a defense of the moral relevance of biological fatherhood, see CALLAHAN, D. (1996) ‘Bioethics and Fatherhood’ in L. MAY (ed.) *Rethinking Masculinity* (Lanham, Rowman and Littlefield), pp. 161–71.
- [59] But has the deceived man validly consented to sex? See HARRIS (fn. 28) on male reproductive autonomy.
- [60] See NELSON, J. L. (1991) ‘Parental Obligations and the Ethics of Surrogacy: A Causal Perspective’, *Public Affairs Quarterly*, 5, 1, pp. 49–61.
- [61] For arguments for the voluntarist view, see Blustein (fn. 25) and O. O’NEILL, ‘Begetting, Bearing, and Rearing’, in O’NEILL and RUDDICK (1979), pp. 25–38. For further discussion, see BAYNE, T. and KOLERS, A. (2003) ‘Toward a Pluralist Account of Parenthood’, *Bioethics*, 17, 3, pp. 221–42, and ‘Parenthood and Procreation’, in E. N. ZALTA (ed.) *The Stanford Encyclopedia of Philosophy* (Spring 2003 Edition), URL = <<http://plato.stanford.edu/archives/spr2003/entries/parenthood/>>.
- [62] Including ARCHARD, D. (1993) *Children: Rights and Childhood* (New York, Routledge); GEORGE, R. (1987) ‘Who Should Bear the Cost of Children?’, *Public Affairs Quarterly*, 1, pp. 1–42; CASAL, P. and WILLIAMS, A. (1995) ‘Rights, Equality and Procreation’, *Analyse und Kritik* 17, 1, pp. 93–116.
- [63] Johnson, Levine, and Doolittle, pp. 173–5, recommend that enforcement should take into account “unemployment or economic hardship” as well as “ill health or incarceration,” and that payments should be adjusted to ensure that an employed non-custodial parent retains enough of his income for basic subsistence.
- [64] A number of people have given me valuable comments on this paper. I would like especially to thank David Archard, Robert Epperson, Noa Latham, Ann Levey, Larry May, Dennis McKerlie, Mark Migotti, Sheldon Wein, and audiences at the Canadian Society for Women in Philosophy conference at the University of Western Ontario and at the Western Canadian Philosophical Association conference at the University of Lethbridge for their helpful suggestions.