

## Fathers and Abortion

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*Abstract* I argue that it is possible for prospective mothers to wrong prospective fathers by bearing their child; and that lifting paternal liability for child support does not correct the wrong inflicted to fathers. It is therefore sometimes wrong for prospective mothers to bear a child, or so I argue here. I show that my argument for considering the legitimate interests of prospective fathers is not a unique exception to an obvious right to procreate. It is, rather, part of a growing consensus that procreation can be morally problematic and that generally talking of rights in this context might not be warranted. Finally, I argue that giving up on a right to procreate does not imply nor suggest giving up on women's absolute right to abort, which I defend.

Keywords: *Abortion; Fathers' Rights; Sexual Ethics*

"Hi Len," Ainsley said lightly. "You hung up on me before I had a chance to explain." Len wouldn't look at her. "Marian has already explained, thanks." Ainsley pouted reproachfully. She had evidently wanted to do it herself. "Well, it was somebody's duty to," Marian said, compressing her lips in a slightly presbyterian manner. "He was suffering." "Maybe I shouldn't have told you at all," Ainsley said, "but I really couldn't keep it to myself. Just think, I'm going to be a mother! I'm really so happy about it."

Len had been gradually bristling and swelling. "Well I'm not so damn happy about it," he burst out. "All along you've only been *using* me. What a moron I was to think you were sweet and innocent, when it turns out you were actually college-educated the whole time! Oh, they are all the same. You weren't interested in *me* at all. The only thing you wanted from me was my body!"

"What did you want," Ainsley asked sweetly, "from me? Anyway, that's all I took. You can have the rest. And you can keep your peace of mind, I'm not threatening you with a paternity suit."

Len had stood up and was pacing the floor, at a safe distance from Ainsley. "Peace of mind. Hah. Oh no, you've involved me. You involved me psychologically. I'll have to think of myself as a father now, it's indecent, and all because you" – he gasped: the idea was a novel one for him – "*you seduced me!*" He waved his beer-bottle at her. "Now I'm going to be all mentally tangled up in Birth. Fecundity. Gestation. Don't you realize what that will do to me? It's obscene, that horrible oozy...."

M. Atwood (1969), *The Edible Woman*. Virago Press, pp. 158-59.

There are two differences between prospective mothers and prospective fathers. The first one is obvious: the prospective mother bears the foetus/child while the prospective father does not (not physically, anyway). The second one is maybe less obvious: with the legalization of abortion, the situation prospective mothers find themselves in after conception is reversible. Prospective mothers might bear the foetus/child, or they might not bear it, opting for an abortion. Prospective fathers do not have that alternative: after conception, there is nothing they can do. If the prospective mother wishes to bear the foetus/child, then they will become fathers (at least biological fathers, anyway). If the prospective mother wishes to abort, then they will not become fathers (not this time, anyway).<sup>1</sup> This difference between prospective mothers and prospective fathers can be illustrated in temporal terms: the prospective mother has alternatives also *after* conception; the prospective father has alternatives only *before* conception (which means the prospective father, *qua* prospective father, has no alternatives; because before conception he is not a prospective father).

These two differences are related: it is, supposedly, because prospective mothers bear the foetus/child and prospective fathers don't (at least not physically), that prospective mothers have alternatives after conception while prospective fathers don't. So what would appear to be the determining factor is not the role played in conception (which is the same); it is rather the role played after conception, which is not the same: the prospective mother physically bears the child/foetus; the prospective father does not. Because the prospective father does not physically bear the child/foetus, then he has no say: he cannot decide of the foetus/child's future.

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<sup>1</sup> Historically, it is painfully true that prospective fathers can always walk away. But that won't stop them becoming, at least, biological fathers (and in most cases legally recognised/recognisable ones).

But the fact that the prospective mother physically bears the foetus/child while the prospective father does not, does not mean that after conception the prospective mother is the only one whose interests are morally relevant. This has already been noticed:

...when a man and a woman autonomously decide to become parents together, a harm done to the fetus by a third party without the consent of both parents is a prima facie wrong done both to the man and to the woman because it is an interference with his autonomy as well as with hers. Moreover, a harm done to the fetus is a harm done to the man as well as to the woman because the fetus is both the object and the result of his pursuing a morally legitimate interest, that is, the interest in procreation (Harris 1986, p. 596).

The point here is simply to illustrate that the morally relevant interests of the prospective father can continue after conception. Whether those interests should result in any rights for prospective fathers or duties for prospective mothers is the topic of this paper.<sup>2</sup>

### *1. Abortions or Pregnancies*

Indeed, in the abortion debate the main question is usually whether abortion is permissible and sometimes whether women have a right to abort – and both questions have historically also often involved the issue of the status of the foetus.<sup>3</sup> Prospective fathers never feature, with one notable exception: Harris (1986, quoted above) argued in *Ethics* that it was sometimes wrong for a woman to abort if the father wanted the baby.

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<sup>2</sup> It may be objected that my talk of 'prospective' fathers and 'prospective' mothers is dubious: as of the moment of conception we should already talk of full-blown fathers and mothers. Two reasons to resist this suggestion: 1) this dispute cannot be adjudicated without taking a stand on the status of the early foetus, and this paper does not go into this complicated issue. 2) Imagine cases of very early miscarriages which go unnoticed: I don't think it would be plausible to refer to those as parents of a dead foetus/child or even only as individuals who have once been parents. Many thanks to an anonymous referee for this journal for pressing me on this point.

<sup>3</sup> See Feinberg 1984 for a classic anthology of the field.

In Margaret Atwood's first novel, *The Edible Woman*, the situation is the other way around: the pregnant woman, Ainsley, wants to keep the baby, while the prospective father, Len, does not. The general situation Atwood describes is typical; but in her particular fictional set-up there are two interestingly distinctive features: Ainsley deliberately set out to become pregnant from someone she doesn't want anything to do with, Len, because she wants to bring up the child alone, without a father. Therefore she asks for no assistance from Len whose job, as she emphatically says, it's done. But Len protests: "You involved me psychologically. I'll have to think of myself as a father now" (1969, p. 159).

What's philosophically interesting about Atwood's set-up is that it does not actually involve the question of whether it would be permissible for Ainsley to have an abortion, or the related question of whether Ainsley has the right to have an abortion: Ainsley does not want an abortion. She *wants* a baby, that's the all point.

The question is, rather, whether continuing the pregnancy is completely up to Ainsley in the face of Len's protestations. Does Ainsley have a right to keep the baby against Len's objections? Is the decision only up to her? One might think that whether the decision to keep the baby is only up to her is intrinsically connected to whether the decision to have an abortion is only up to her: indeed, there seems to be no third way between aborting and continuing with a pregnancy. So that a decision to abort is a decision to not bear the foetus/child, and a decision to bear the foetus/child is a decision not to abort.

Now if abortion is impermissible, then there is no such thing as pregnancy deliberation after conception<sup>4</sup>: the only thing the prospective mother (or parents) can do is to keep the baby. But if abortion is, even only sometimes, permissible, then the question of after-conception deliberation does arise; and then it is at least logically possible that a woman might have a right to an abortion but not a right to keep a baby. That is: a woman may decide to abort whatever the circumstances, but she may not decide to keep the baby (or: not to

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<sup>4</sup> Apart, obviously, from deliberating whether to do the right thing or not.

abort) whatever the circumstances. The former does not imply the latter and, as we will see, it does not even suggest it.

There is another important feature in Atwood's story: Len is not objecting to being forced into a marriage he does not want, nor is he objecting to having to support a child he does not want. Neither is requested of him: indeed, nothing at all is requested of him. He can walk away and never see Ainsley or the baby again. Still, that is apparently not good enough for Len: he objects to his *psychological* involvement; and he objects to being a father – where that means, supposedly, a biological father, since he is not requested to perform any of the other tasks usually associated with fatherhood.

Oh no, you've involved me. You involved me psychologically. I'll have to think of myself as a father now, it's indecent (Atwood 1969, p. 159).

My primary hypothesis is that it is not always justified for a prospective mother to carry the pregnancy to completion, and that therefore a prospective mother does not have a right to keep the baby (or, (at least try to) carry the pregnancy to completion). My secondary hypothesis is that even though a prospective mother does not have a right to keep the baby, that does not imply nor suggest that a prospective mother does not have a right to abort. So women have a right to abort – a right which is absolute; that is, it is always up to them and only up to them to abort (so Harris 1986 is wrong). But at the same time women do not have an absolute right to (at least try to) carry pregnancies to completion.

Before presenting my argument, I'd like to clarify my talk of 'fathers' and 'mothers'. 'Fathers' and 'mothers' are taken to identify different sexes, men and women respectively. But, for the purposes of my argument, I don't want to put any emphasis on the fact that, generally, fathers are men and mothers are women. All I am interested in is the different roles that fathers and mothers play in pregnancies, and how such different roles influence and

should influence deliberations over the continuation or termination of a pregnancy. We may imagine species and communities not too dissimilar from ours in which both men and women are capable of becoming pregnant – after intercourse it is sometimes the woman who becomes pregnant, sometimes the man. And we can imagine species and communities not too dissimilar from ours in which the whole process happens outside of either body.

The different positions on abortion could be classified as follows:

- Some think that abortion is always impermissible, whether or not the foetus is a person (Marquis 1989);
- Some think that abortion is always impermissible, because the foetus is a person (this is the classic view often attributed to, amongst others, Roman Catholics – for a statement of this position see Noonan 1984)<sup>5</sup>;
- Some think that abortion is sometimes permissible, whether or not the foetus is a person (this is what Thomson's (1971) notorious violinist scenario is supposed to demonstrate);
- Some think that abortion is sometimes permissible (in self-defense, for example), even though the foetus is a person (this is Noonan's (1984) own position);
- Some think that women have a right to abortion, because the foetus is not a person;
- Some think that women have a right to abortion, whether or not the foetus is a person;
- Harris (1986) thinks that it is sometimes wrong for women to abort if prospective fathers want the baby;
- Some think that, in certain circumstances, fathers have no obligations to the foetus and then the baby (Pavlishek 1993; Hales 1996; Brake 2005);

Nobody argues that it is sometimes wrong for women to keep a baby if prospective fathers want an abortion, and that therefore women do not have a right to keep the baby. A case in point is, for example, the legal case of Peter Wallis suing his former partner Kellie Smith “for

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<sup>5</sup> This paper does not discuss the difficult issue of the status of fetuses.

becoming pregnant against his will, accusing her of ‘intentionally acquiring and misusing’ his semen” (*Washington Post*, 23.11.98) – a real-life version of Atwood’s fiction.

## 2. *Wallis vs. Smith*

“Wallis is claiming that Smith promised to take birth control pills but then quit without telling him, essentially forcing him into a role he did not choose: fatherhood and the child support that goes with it... Wallis, a 36-year-old Albuquerque real estate broker, said the lawsuit is essentially about fraud. Both he and Smith talked about birth control early in the relationship, he said. ‘I told her the only method that was foolproof enough for me was the pill,’ he said. She agreed to take the pill and that amounted to a contract, he argued” (*WP*, 23.11.98).

Interestingly, Smith argued that Wallis’s sperm should be considered a “gift... he surrendered any right of possession to his semen when he transferred it... during voluntary sexual intercourse” (*WP*, 23.11.98 – see also Murphy 2000).<sup>6</sup> A couple of points are worth emphasizing: Wallis sued after the child was born; so Wallis was not trying to prevent Smith from bearing the foetus/child. He was simply suing for damages. Secondly, Wallis’s case, arguing that he was the victim of fraud, centred on the idea that he was deceived. And that as a result of the deception he had become a father against his will. And that this was, presumably, unfair.

Wallis’s case adds an important new element to Atwood’s fictional structure: neither Len nor Wallis wanted to become fathers. But Wallis thinks that his becoming a father is positively unfair because he had taken steps to avoid it – those steps would have been effective had it not been for Smith’s deception, supposedly. That is where fairness comes in: there was an agreement and the agreement was, unbeknownst to Wallis, broken. The question that Wallis wants us to ask is: is it fair that he has become a father? Also, is it fair that he is

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<sup>6</sup> Wallis lost, unsurprisingly. Tried his luck again with the New Mexico Supreme Court, where he again lost (*Albuquerque Journal*, 26.4.2001)

now liable to pay child support? Wallis feels wronged. Has he been? Has Smith wronged him by ‘making him a father’ against his will?

Suppose that, as Wallis suggests, the couple had discussed the possibility of a pregnancy at length. Suppose that Wallis had made it extremely clear that he did not wish to father a child, and that he felt very strongly about that. Suppose, further, that Wallis had asked for the use of contraceptives as a necessary condition for sex. And suppose that Smith had agreed to all this, declaring herself also unwilling to become pregnant.<sup>7</sup> Notwithstanding, suppose that Smith, like Ainsley, had wanted all along to become pregnant. Suppose that Smith thought of Wallis primarily as a means to becoming pregnant – the way in which Ainsley thought of Len, for example. Therefore Smith deceives Wallis with the goal of becoming pregnant – which she ultimately achieves.

To clarify the case, you can also add that Wallis would have fulfilled his reasonable epistemic duties: he might have regularly checked Smith’s pill supplies, for example. Wallis might have brought up the topic on a regular basis, to ensure that they both felt as strongly as before about it: that there had been no change of mind. He might have made himself familiar with all the relevant facts by researching the issues, consulting pharmacists and doctors, etc. The idea would be that there is nothing more that could have been reasonably demanded of Wallis – apart from, quite obviously, abstaining from sex.

All the same, Wallis’s efforts are unsuccessful and, through no mistake of Wallis (apart from, again, not abstaining from sex – if that is to count as a ‘mistake’), Smith becomes pregnant. It appears that Wallis has been mistreated. If Smith bears the foetus/child, Wallis will become a father. He did not want to become a father, and he did all he reasonably could do avoid becoming a father. But, after conception, there is nothing else he can do. It is now all in Smith’s hands. If Smith decides to bear the foetus/child, then Wallis will become a father. If Smith decides not to bear the foetus/child, then Wallis will not become a father. After

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<sup>7</sup> These sorts of exchanges might appear unlikely when described in a theoretical context, but something of this sort happens all the time in both casual and regular relationships.



conception, there is nothing that Wallis can do to influence either outcome – apart from pleading, I guess.

### *3. Fathers and Mothers*

Here are four possible views of the situation:

1. One might think that there is nothing unfair in this situation, that nobody has been wronged, and that therefore the situation does not call for any revision of our principles governing pregnancies, abortions, and the mother-father relationship;
2. Alternatively, one might think that there is indeed something that has gone wrong here; that Wallis has been genuinely wronged and that what happened to him is not fair; but, ultimately, this is the result of the different natural roles that prospective mothers and prospective fathers have; these are natural differences that ought not to be compensated by normative principles;
3. Or one might think that this situation, because unfair and unjust, does call for some normative regulation; for example, Wallis ought not to be liable for child support, one might propose: similar proposals are already in the literature, even if not directly connected with the kind of scenario I have envisaged (Pavlischek 1993; Hales 1996; Brake 2005);
4. Finally, one might think that if Smith decides to bear the foetus/child, that would wrong Wallis; and that therefore Smith's bearing of the foetus/child would be wrong and unjustified, so that Smith does not actually have the right to bear the foetus/child. This would have the important consequence that prospective mothers do not have the right to bear a foetus/child.

In order to help us decide between these different positions, I shall introduce a second scenario. Suppose that a woman sexually assaults a man, becoming pregnant as a direct result of the assault. The point of this scenario is two-fold: it is, first, to emphasize the idea that the

unwilling father has been wronged; and, second, to emphasize the idea that the unwilling father could not have prevented his becoming a father. He was forced into it, whether through deception (original scenario) or assault (new scenario).

Here it is important to distinguish between the wrongness of the deception or assault, and the wrongness of bearing the foetus/child against the wishes of the victim. It might be that the wrongness of the latter depends on the wrongness of the former, or it might be that they are independent. But the important point is that if those things are wrong, they are different wrongs. Similarly to when a victim of rape is not allowed to abort, she is then wronged twice: firstly the rape, and then also the denied abortion. Rape is a further consideration in favour of allowing her to abort; some people might also think that she should be allowed to abort only because she has been raped. All the same, denying her an abortion is a further and distinct wrong.

So it seems that arguing that prospective mothers can never wrong prospective fathers by bearing a foetus/child runs against some plausible counterexamples. It might be insisted that notwithstanding the wrongness of deception and assault, it is not wrong for prospective mothers to bear the foetus/child simply because prospective fathers know (or anyway ought to know) that sex can lead to pregnancy and therefore their voluntary involvement in sex means that they are not being wronged if the prospective mother then decides to bear the foetus/child against their wishes – this is Smith’s ‘gift’ response to Wallis.

There are two fundamental problems with this reply: first, of the two counterexamples I have put forward, only one involves voluntary sex. So even though many if not most of the relevant cases will involve voluntary sex, not of all them do; so that building one’s reply on the idea of voluntary sex cannot cover all cases and therefore cannot defend the idea that a prospective mother can *never* wrong a prospective father by bearing the foetus/child.

But there is a more radical problem with this strategy: if we insist that men’s only really legitimate (because effective) way of pursuing their wishes of not becoming fathers is to

abstain from sex<sup>8</sup>, then we commit ourselves to an old-fashioned conception of sex that most people nowadays rightly reject: the strict functional link between sex and procreation. To demand that men who do not wish to become fathers abstain from sex altogether is to return to the idea that sex is primarily procreative. Here the problem is not just fairness, rather what sort of conception of sex we want. If we don't want a purely procreative conception of sex, then we must allow for a reasonable way in which men might practice sex without wishing to become fathers.<sup>9</sup>

There is also a question of fairness: if we insist that men who do not want to become fathers abstain from sex, then we end up in a situation in which men who do not want to become fathers need to abstain from sex, while women who do not want to become mothers need not abstain from sex.<sup>10</sup>

What about vasectomy? That seems to be a way for men to ensure themselves against the risk of becoming fathers without having to abstain from sex. Two problems with this solution: 1) someone may not want to become a father here, now, or with a particular partner. But that does not mean that he never wants to be a father. 2) Also, vasectomy does not answer the sexual assault case: we could not ask anybody to undergo a vasectomy just in case they may be sexually assaulted.<sup>11</sup>

I conclude, then, that we ought to accept the possibility that prospective mothers can wrong prospective fathers by bearing a foetus/child. The more important question, now, is what follows from this possibility. Does it follow, for example, that prospective mothers do not have a right to bear a foetus/child?

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<sup>8</sup> At least if you are not Boris Becker!

<sup>9</sup> To clarify: with 'procreative conception of sex' I do not mean the old Catholic idea that sex is only justified when it is practiced with the intention to procreate. One could rather just hold the weaker claim that the possibility or risk of procreation is one of the necessary components of sex. But that is just as problematic as it would rule out many sexual practices, such as homosexual sex, oral sex, anal sex, etc. I have written elsewhere on sexual rights: see Di Nucci (2011).

<sup>10</sup> In an historical context, this imbalance might be considered fair compensation for millennia in which the opposite was true. But from a purely theoretical point of view, the set up doesn't look ultimately balanced.

<sup>11</sup> Thanks to an anonymous referee for this journal for suggesting this possibility.

#### *4. Child support*

Here is a way to embrace the idea that prospective mothers can wrong prospective fathers by bearing a foetus/child while at the same time rejecting the idea that prospective mothers do not have a right to bear a foetus/child: it could be argued that while prospective mothers do have a right to bear a foetus/child, they do not have a right to child support, because sometimes the wrong they have caused to fathers by bearing the child is such that it entitles fathers to forgo their financial responsibilities.

As I have already noted, this possibility is already in the literature (Pavlicsek 1993; Hales 1996; Brake 2005) and I will not discuss its specific merits in detail in this paper, where I rather wish to highlight two general problems with this strategy. Len mentions the first problem in Atwood's novel, where he says that it is not good enough that Ainsley no longer requires his involvement, because he has already been involved 'psychologically': he will have to think of himself as a father now. The idea, here, is that giving the option of no material involvement with the child does not actually meet the father's complaint. The very existence of the child is what bothers the prospective father, rather than the financial implications of its existence.

A similar point comes up often in the traditional abortion literature (Ross 1982, Reader 2008) in two places: in arguing against the common anti-abortionist reply that the baby could be given up for adoption; and in the related claim that pregnant women don't just want the termination of the pregnancy (evacuation), they want the death of the foetus because they do not want to become mothers.

A woman may feel very strongly that she and not anyone else ought to raise whatever child she brings into the world (Ross 1982, p. 240).

...the continued life of your child in someone else's care may be harmful to mothers and children. As a mother, you will always know that your child is somewhere in the world. If you are not blithe or callous, you will be concerned about your children (Reader 2008, p. 144).

Len's preoccupations, when he complains that he has already been irremediably involved, seems to be exactly that he "will always know that [his] child is somewhere in the world". This is the harm that unwilling fatherhood carries with it; this is why prospective mothers wrong prospective fathers by bearing the child. It is not future material responsibilities, or anyway not only future material responsibilities. The problem is, in one word, *ontological*. Interestingly, Reader goes on to argue that mothers do not just have a right to abortion as evacuation to terminate the pregnancy, but that mothers also have the right to abortion-as-killing to prevent the child's existence and the consequent harm illustrated above.

While arguing the mothers alone have the moral authority to kill the foetus, Reader mentions fathers to strengthen the idea that this moral authority is the mother's only:

Ross is quite right that fathers have parental wishes, commitments, feelings, values, and aspirations about themselves as fathers or non-fathers, and it is equally obvious that fathers may just as rationally as mothers wish their fetuses dead. But it is inconceivable that a paternal wish to have a fetus dead should carry any moral authority over what the pregnant mother may do, or what may permissibly be done to or required of her. This must be because of a morally significant difference between motherhood and fatherhood, which Ross fails to explain. Where Ross says, "Only the parent's desire to see the fetus dead is ever taken seriously," this is actually true only of the mother's desire. No father could possibly have a reason we would take seriously for a moment (Reader 2008, p. 138).

This is in reply to Ross (1982) appearing to concede that fathers might also legitimately wish to see the foetus dead:

As many antiabortionists say now, and doubtless many more would say given the possibility of abortion [as-evacuation], you don't have to bring it home; you could very well abandon it and put it up for adoption. And of course they are right—we could. But this course of action would not stop our being parents, at least not in one rather obvious sense of the term. It would not in fact free our life of a certain kind of complication. Although we would not be bringing the child up, because someone else (let us assume) is all too gladly embracing those tasks, we do not want precisely this state of affairs to come about. Strictly speaking, there is no reason why either parent could not feel this way... certainly the values that underlie this desire are not unavailable to men (Ross 1982, pp. 238-39).

There is another important point in distinguishing between the material responsibilities of fatherhood and the very existence of the child – that is, the very fact of being a father. When a prospective father wishes that the prospective mother would abort, he does so because he does not want to become a father. But one of the reasons why he does not want to become a father is likely to be exactly the fact that, were he to become a father, he would not be able to ignore the child, his child: he would inevitably care for the child, both emotionally and materially. He would inevitably have a relationship to it, whether fulfilling or otherwise. And it is exactly that caring relationship that the prospective father, just like Reader's prospective mother, wants to avoid.

This is why arguing that fathers might sometimes not be liable to pay child support does not really address the prospective fathers' concerns in not wanting to become fathers:

these concerns are not *material*, but fundamentally *personal*. Furthermore, fathers might, once the child is born, want to (or feel a duty to) support it materially (and emotionally). But it is exactly this state of affairs of coerced parenthood that they want to avoid and, as I have argued, sometimes their interests in this regard might be legitimate.

Also, when considering the conflict between the prospective mother's wish to become a mother and the prospective father's wish to not become a father we should consider the following disanalogy: the fulfillment of the mother's wish is irreversible. She will become, willingly, a mother and he will become, unwillingly, a father. That can never be undone. The fulfillment of the father's wish is, on the other hand, importantly reversible: she will not become a mother, unwillingly; and he will not become a father, willingly. But both will have, in normal circumstances, the opportunity to become parents again. So the two options are different in this important respect: only one of them, abortion, is (normally) reversible.<sup>12</sup>

##### 5. *Is there a right to procreate?*

Let us take stock: I have argued that it is possible for prospective mothers to wrong and harm prospective fathers by bearing their foetus/child; and I have argued that lifting paternal liability for child support does not correct the wrong and harm inflicted to fathers. If we can't find alternative ways to argue that prospective mothers have the right to bear a foetus/child even when bearing the foetus/child will wrong and harm the prospective father, then we will have to give up on prospective mothers' right to bear a foetus/child.

On the face of it, denying the right to procreate might look outrageous. After all, procreation is one of our fundamental contributions to both society and our species. And it won't help to specify that we would be denying, specifically, prospective mothers' right to bear children after conception rather than, generally, women's (or, more generally, people's) rights to procreate. Because these are cases in which women wish to procreate and in which,

<sup>12</sup> Reversibility here applies only to the fact of motherhood and fatherhood, and not to the mothering or fathering of a particular child.

the argument goes, procreating would be wrong and harmful to fathers, and ultimately unjustified. So they would not have the right to procreate.

The fact that these specific cases deal with the right to procreate after conception does not mean that the point cannot be generalized. This can be easily illustrated by pointing out that, in the cases of deception and assault that we have described, just as it is wrong after conception to bear the child, it would be wrong to set out to deceive or assault and then keep the child regardless of the father's wish in the first place. So those are cases in which procreating – in these particular ways – is wrong. So procreating is not always justified. So women do not have the right to procreate.

Is this acceptable? The idea that it is not always justified to procreate or bear a foetus/child rather than abort should come as no surprise: there are other cases, cases not involving prospective fathers, in which this principle is often upheld. On the legislative side, think of China's one child only policy. On the normative side, think, for example, that in the face of overwhelming evidence on the health of the foetus (and therefore future health of the child), it would be wrong to bear that foetus/child. And, importantly, this would not depend on considering the foetus to be a person. Think of all the arguments for contraception in deprived areas and against overpopulation. Consider, finally, extreme anti-natal positions (Benatar 2006).

The idea is that my argument for considering the legitimate interests of prospective fathers is not a unique exception to an obvious right to procreate. It is, rather, part of a growing consensus that procreation can be morally problematic and that generally talking of rights in this context might not be warranted. We should rather start to think that procreation too needs to be morally justified.



## 6. *Women's absolute right to abort*

I conclude this paper by arguing that denying that prospective mothers have a right to bear the foetus does not imply nor suggest that prospective mothers do not have the right to abort the foetus. Indeed, I believe that prospective mothers have a right to abort even though they do not have a right to bear the foetus. For the purposes of this paper I can't defend a woman's right to abort against every challenge that has been brought against it.<sup>13</sup> I shall only consider the challenge that is most relevant given the content of this paper: Harris' idea that "in some cases it would be morally impermissible for a woman to have an abortion because it would be a wrongful harm to the father and a violation of his autonomy" (1986, p. 594).

Harris presents two scenarios where he thinks that it would be "morally impermissible for the woman to proceed with the abortion" (1986, p. 596).

Michelle and Steve, like Susan and Charles, are also in the fifth year of their marriage. And Steve, like Charles, is equally and similarly desirous of a family. Michelle, however, knows all along that she does not want children but avoids discussing the issue with Steve, allowing him to think that the beginning of their family is just a matter of time. She believes that eventually she can disabuse him of the values of family life in favor of a simple life together. But due to the unpleasantness of broaching the subject, Michelle procrastinates and accidentally becomes pregnant. And despite Steve's expectations, his pleas, and his offer to take on the major responsibilities of raising the child, Michelle decides to abort.

Anne is a man hater. Resentment brought on in part by traditional male chauvinistic attitudes toward women has led her to stereotype all men as little more than barbarians. Mark is a reasonably decent man, who, like Charles and Steve, desires very much to be a parent. After meeting Mark, Anne devises a plan to vicariously vent

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<sup>13</sup> I have written on abortion elsewhere: see Di Nucci (2009a), Di Nucci (2009b), and Di Nucci (submitted).

her rage through Mark on the entire male sex. Carefully playing the role of a conventionally attractive woman with traditional life plans, she sets out to seduce Mark. Soon he falls in love with her and, thinking that he has met the ideal mate, proposes marriage. She accepts and after the wedding convinces Mark that if they are to have a happy married life and a healthy environment in which to raise children he must give up his lucrative realty business and the house he inherited from his parents. Valuing his life with Anne and the prospects of a family more than his career, he sells the business at a considerable loss and takes a less lucrative job. He also sells his home and buys another, again at a considerable financial loss. Finally, Anne becomes pregnant. Initially, she plays the adorable expectant mother, intentionally heightening Mark's expectations. But later she has an abortion. Relishing Mark's horror, she further reveals her scheme and explains that his pain and loss are merely the just deserts of any man for the things that men have done to women (Harris 1986, pp. 595-96).

Harris thinks that both Michelle and Anne wrongfully harm their partners and that they violate "the father's autonomy; that is, invades the man's morally legitimate interest in self-determination" (1986, p. 596).

A few considerations: Anne's and Michelle's wrongful harm to their partners (if it is wrong and if it is harm, which at least in Anne's case it probably is) is reversible; because of the considerations that have already emerged in the paper, Mark and Steve's legitimate interests in parenthood might have been disregarded, but not irremediably. They will hopefully still have the chance to become successful parents.

Secondly, Mark and Steve might have a legitimate interest in becoming fathers, but they don't have a right to become fathers, simply because nobody has that right (or so I have argued in this paper). So even if Anne and Michelle have wrongfully harmed them, they have not violated their right to parenthood.

Thirdly, imagine similar scenarios in which Anne and Michelle, before carrying out the abortion, experience complications. The foetus is safe and healthy but, they are told, they will have a difficult gestation, and one that could seriously harm their (the mothers') health. At this stage, Mark and Steve's legitimate interests would appear to result irrelevant. We couldn't expect Anne and Michelle to continue to gestate. This suggests that even though Anne and Michelle's behaviour in the original scenarios might constitute wrongful harm, and even though their decision to abort is part of what makes such behaviour wrongful harm, still they could not be obliged to bear the baby irrespective of what they have promised their partners. The case of deception is the simplest: having deceived their partner could never result in a duty to bear the baby.

Finally, and possibly more importantly, there is an important difference between the responsibility to abort (which I have been defending) and the responsibility to bear the foetus which Harris defends. Apart from the already mentioned issue of reversibility, gestation is literally invasive of a woman's body in a way in which abortion is not – both temporally and spatially<sup>14</sup>.

To sum up, I think that Harris' case for the impermissibility of some abortions on the grounds of father's legitimate interests is inconclusive. And that therefore defending father's interests the way I have done in this paper does not interfere with a woman's absolute right to abort; while it does show that there is no right to bear the foetus.

In conclusion, I should say something about the extent of my thesis. There are three possible degrees of strength with which my argument in this paper can be interpreted: firstly, it may be taken to show that it is sometimes wrong for women to carry on a pregnancy – specifically in that sometimes women, in carrying on a pregnancy, wrong the prospective father. Secondly, it may be taken to show, further, that since it is sometimes wrong for women

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<sup>14</sup> This is a very rough judgement of degree that I won't defend in detail here: but one may think of nine months against a pill or a day hospital procedure, for example. Clearly one can then also think of the possible psychological consequences of an abortion, but here my point is restricted to non-psychological aspects, as not aborting has obvious psychological consequences too.

to carry on a pregnancy, then women do not have the absolute right to carry on pregnancies. Thirdly, one may go as far as suggesting that my argument defends a sort of forced abortion that would be in exceptional cases justified by fathers' rights. This last, most extreme suggestion, needs certainly more argument than I have offered here, because it needs the further crucial premise that some rights of the prospective father may sometimes trump rights of the prospective mother such as her right not to have her body violated against her will. Here I have offered a way in which one may start to argue in that direction, should one so wish: cases of sexual assault could, for example, be taken to be paradigmatic cases in which one forgoes other rights just as it often happens with criminal offences. Also, importantly, the other two weaker interpretations of my thesis stand independently of the third one.

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