

Maternal Autonomy and Prenatal Harm¹

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1. Introduction

If given the unfortunate choice, you should impose a risk of moderate harm on an individual rather than a risk of death, other things equal. That's because moderate harm is better for someone than death. This relation holds under uncertainty: *risking* moderate harm is better for someone than *risking* their death, keeping likelihoods constant. After all, if your parachute might fail, would you rather jump from a height that will leave you with chronic moderate pain you if it fails or one that will kill you if it does?

However, the relationship between two special cases of harm and death — namely, of prenatal harm and abortion — seems different. For example, suppose that an expectant early-term mother² must choose between two treatments to save her life. The first risks harming the fetus so that it will suffer chronic moderate pain through adulthood. The second will terminate the pregnancy. Given these details, it seems that the mother may choose either treatment. But this conflicts with the idea sketched above that harm is preferable to death. Similarly, a mother addicted to a fetus-harming intoxicant may terminate her pregnancy if she knows severe relapse is in her future even if the intoxicant's harm is better for the fetus than death. Prenatal harms therefore often seem objectionable in a way that other harms are not. The challenge is to explain why.

This paper begins by rehearsing and criticizing some rival answers to this question, focusing on McMahan (2006). It then identifies structural similarities between key cases of prenatal harm and the recently characterized 'all-or-nothing' problem from Horton (2017; *c.f.*, 2019). These similarities extend Horton's solution to the problem to the explanatory challenge posed by prenatal harm. According to Horton, roughly, a willingness to make sacrifices is a condition of bearing certain obligations. I argue that extending this solution to the challenge above implies that a willingness to parent incurs a defeasible duty to protect the fetus from harm. This argument has broader implications. It provides independent support for so-called 'voluntarist' accounts of parental role obligations according to which, roughly, a person's autonomous choice to parent a child suffices for having the obligations distinctive of parenting that child.

2. Stage-Setting

¹ Thanks to participants of the CSU Long Beach Applied Ethics Forum for helpful discussion.

² I stipulatively use 'mother' to mean 'person who is pregnant'. Likewise, when I use 'woman', it is in its sex-denoting, not gender-denoting, sense, which differ extensionally.

Questions about the morality of prenatal harm figure prominently in recent discussion in this very journal, owing largely to Hendricks (2018). Perry Hendricks defends the *Impairment Argument* against abortion. Death, it seems, is worse for the fetus than some prenatal harms such as fetal alcohol syndrome (FAS). Hendricks mobilizes the intuitions underlying this claim to advance an argument like the following:³

- (1) If prenatal harm is wrong, then, other things equal, abortion is wrong.
- (2) Prenatal harm is wrong.
- (3) Therefore, other things equal, abortion is wrong.

Philosophers have criticized the argument for missing the moral significance of maternal autonomy. In particular, Claire Pickard (2020) and Dustin Crummett (2020) argue that this failure considerably weakens the argument's conclusion.⁴ As Pickard puts it, "Often, in cases of unwanted pregnancy, a woman wishes to assert bodily autonomy simply in order to not have another entity growing inside her. If the goal is to rid one's uterus of an unwelcome visitor, then it is reasonable to say that the woman is upholding her "bodily autonomy" in choosing to abort" (Pickard 2020: 209). Since a woman's assertion of her autonomy is a moral good, Hendricks's *ceteris paribus* clause is often not met. In such cases, Hendricks' argument for the prohibition of abortion simply does not apply.

Similarly, Crummett argues that "carrying an unwanted pregnancy to term is far more burdensome than is abstaining from excessive drinking for nine months, [which is] a morally important difference" (Crummett 2020: 215). Since most terminated pregnancies are terminated because they are unwanted, Hendricks's argument is thus much weaker than it first appears, failing to demonstrate that abortion is wrong in most cases.

However, premise (2) in Hendricks's argument is comparatively less disputed. It's not hard to see why. David Wasserman offers a particularly vivid illustration:

Consider [a woman who] loves contact sports, and continues to participate despite her intention to bear the fetus and her knowledge that those sports place it at grave risk of impairment. [...] She smashes into an opponent in a particularly rough game, severely injuring her fetus. [...] This case, then, seems to fracture our moral appraisal: if the woman does what is better for the fetus, she will have done something wrong; and worse than what she would do if she did what was worse for the fetus and aborted. (Wasserman 2005: 27)

Wasserman's protagonist is open to genuine moral criticism; recklessly injuring her fetus seems clearly wrong. But the woman would not be open to similar criticism for choosing to abort the fetus. This is puzzling if risking moderate harm is generally preferable to risking death.

Stepping back from these claims reveals the puzzle: prenatal harm, at least of the kind considered here, is better for the fetus than death. And the woman in Wasserman's story has the "intention to bear the fetus", so it does not obviously impinge on her autonomy. How then could injuring the fetus be wrong when aborting it isn't?

³ Hendricks focuses on a specific case of prenatal harm: fetal alcohol syndrome. According to his conditional premise, "If causing *O* to have FAS is immoral then, *ceteris paribus*, killing *O* is immoral" and he includes the claim that aborting *O* is killing *O* as a separate premise. See Hendricks (2018: 248).

⁴ Blackshaw and Hendricks (2020) reply to Crummett's criticism. Crummett (Forthcoming) rebuts their reply.

There are three pieces to this puzzle. In many cases of pregnancy:

- (4) Abortion is permissible.
- (5) Pre-natal harm is impermissible.
- (6) Pre-natal harm is better for the fetus than abortion.

I am not suggesting that (4-6) are inconsistent. The challenge is, rather, to explain how they hang together, as they appear to in the competent judgments of many ordinary moral agents. In particular, the main challenge is to explain why (5) and (4) are often both true. I'll focus on (5). Although I assume in what follows (4), it's worth mentioning why the assumption is credible. I'm concerned with harms that occur before the fetus acquires the qualities in virtue of which they are persons. As McMahan (2001) and Boonin (2002) comprehensively argue, *inter magna alia*, it's overwhelmingly plausible that young fetuses lack intrinsic moral status as persons. As non-persons, these fetuses make only weak moral claims. Consequently, abortion is permissible when the reasons for terminating the pregnancy, most often originating in maternal autonomy, outweigh the relatively weak claims of the fetus.

(5) is part of common-sense morality. But reflecting on (4) and (6) might lead one to doubt it. Indeed, Flanigan (2020) defends the general permissibility of prenatal harm while granting "that it is counterintuitive to claim that mothers who take serious risks while pregnant act within their rights and are not required to do otherwise" (12). Part of her argument relies on the idea that pregnancy is supererogatory. As we will see, this claim is limited in certain central cases.

I endorse the following explanation of (5). Because the fetus lacks that quality, whatever it is, that makes you and me genuine persons, it has weaker claims against death and harm than it will when it becomes a child.⁵ Aborting the fetus is therefore permissible if the mother wishes, since its claim to life is weaker than the mother's claim to bodily autonomy. However, if the fetus suffers culpable prenatal injury it *will* have a strong claim against harm against the person who harmed it when the fetus becomes a person.⁶ Prenatal injury therefore leads to a serious *future* complaint; a moral criticism that the fetus is not yet in a position to offer but will be soon enough. Abortion, however, does not lead to a serious future complaint. Thus, prenatal harm is often wrong in a way that abortion is not. Call this, tendentiously, *the Right Explanation*.

To restrict discussion to a manageable scope, the kind of pre-natal harm discussed, unless stated otherwise, is chronic pain of various degrees. When I speak of prenatal injury, the

⁵ Several accounts of why fetuses lack the full moral status of persons have been advanced. Since nothing below depends on the details of which account is true, I'll avoid committing myself to any such explanation in particular. For example, Shiffrin (1999) denies that fetuses have autonomy, so she denies that they have non-derivative moral status. They have only derivative moral status in virtue of their connection to the child that they will become. Similarly, Harman (1999) defends the Actual Future Principle according to which "an early fetus that will become a person has some moral status. An early fetus that will die while it is still an early fetus has no moral status" (311); Boonin (2002) argues that fetuses lack the dispositional desires that underlie a right to life.

⁶ One way to justify this claim is to establish that the fetus is numerically identical with the person it will become. But weaker relations between the fetus and the child it will become appear to suffice. For example, Shiffrin (1999) writes, "If our actions now set into motion causal chains that will result in a right's being violated in the future, this action is, at best, morally problematic" (138). So long as the fetus bears the appropriate causal relations to the child, harm done to the fetus is answerable to later claims from the child.

morally relevant result of such injury is chronic pain.⁷ Since chronic pain is plainly a harm, I needn't commit to a particular explanation of *why* experiencing pain is harmful or intrinsically bad. Pain is bad, it might seem, because of the way it feels.⁸ Or it may be, as Shiffrin contends, that painful feelings are only derivatively bad because they cause the more fundamental bad of bringing "about a cleavage between a person's life and her will."⁹ Or perhaps pain is something to which people are necessarily constitutionally averse. Experiencing pain, therefore, frustrates a universal desire and the frustration of one's desires is intrinsically bad for an individual.¹⁰ My claims are compatible with each of these positions.

2. The Problem of Abortion as Remedy to Prenatal Injury

2.1 Three and Two Choices

The Right Explanation is controversial. In particular, some are concerned that it implies that "abortion is an acceptable remedy to prenatal injury."¹¹ To appreciate this concern, suppose that a woman culpably or negligently harms her fetus, like Wasserman's protagonist. She can either terminate the pregnancy or give birth to a moderately harmed child whose life is worth living but who will suffer chronic moderate pain as a result of the mother's harm. If the mother gives birth, she will be liable to a serious future complaint from the child that the fetus will become. If she terminates the pregnancy, however, she will not be liable to such a complaint. Since abortion is permissible, it seems that the woman *should* terminate the pregnancy. Doing so avoids serious moral complaint, and so wrongdoing, while continued gestation does not.¹²

This concern leads some to deny that the fetus's claim to life is always weaker than the mother's claim to bodily autonomy, positing a comparatively stronger conception of fetal interests than the one posited by the Right Explanation. These stronger interests provide a bulwark against using abortion to remedy prenatal harm. As Jeff McMahan puts it, "liberals must not allow their justified concern to protect the rights of pregnant women from intrusive

⁷ Chronic pain may also be bad in a second way, not only *qua* harm but also *qua* disability, in the sense expressed in the Americans with Disabilities Act of "a physical or mental impairment that substantially limits one or more of [someone's] major life activities." Indeed, disability may seem like a species of harm — Shiffrin's account of harm implies as much. However, Barnes (2014) casts doubt on this claim. So I explicitly bracket moral issues that arise from the disabling consequences of chronic pain in my discussion below, while recognizing that we can only imperfectly bracket our intuitions about those consequences in the cases below.

⁸ Bradford (2020) calls this view 'dolorism'.

⁹ Shiffrin (1999).

¹⁰ For example, Heathwood (2006; forthcoming) defends the idea that one's welfare is a function of the satisfaction or frustration of one's desires. If welfare just is what's good, then pain is intrinsically bad, since it frustrates the good.

¹¹ McMahan (2006: 626).

¹² "It is implausible to suppose that women who injure their fetus are then morally required, if other things are equal, to kill it" (McMahan 2006: 646).

legislation to lead them to deny or discount the gravity of the wrong involved in prenatal injury” (635).¹³

This concern is misplaced. As I’ll argue, it results from insufficient attention to the rights and duties that flow from the expectant mother’s autonomous choices. Maternal autonomy has been central to discussion of the morality of pregnancy since at least Judith Thomson’s landmark “A Defense of Abortion” and almost certainly before. It is unsurprising, then, that autonomy also figures centrally in the morality of prenatal harm. Properly attending to the rights and duties that flow from maternal autonomy explains why the Right Explanation does not require mothers to abort fetuses that they have culpably injured.

I’ll start by clearing a space for maternal autonomy in discussions of the morality of prenatal harm by focusing on McMahan’s concerns about the Right Explanation. McMahan is misled by two cases in particular, which share some preliminary facts. Suppose that a pregnant woman has a condition that, if she forgoes treatment, will lead to chronic mild pain for the rest of her life. The condition can be treated in two ways but both threaten the fetus’ interests. Taking the Abortifacient Pill will cure her but injure and then painlessly kill the fetus. The Mutagenic Pill will cure her equally well but injure the fetus so that it will experience moderate chronic pain for rest of its life.

In *Three Choices*, she has the option of forgoing treatment, in which case she would give birth to a baby who will not experience moderate chronic pain but she will experience mild chronic pain for the rest of her life. In *Two Choices*, however, this third choice is not an option. Rather, “her society is paternalistic, and the hospital will force her to take a pill but will allow her to decide which to take” (637). So she must choose between pills; she cannot forgo treatment.

The central difference between the two cases is a difference in the mother’s options:

	Three Choices	Two Choices
Option 1	Take the Abortifacient Pill, avoid a lifetime of chronic mild pain, injure then painlessly kill the fetus	Take the Abortifacient Pill, avoid a lifetime of chronic mild pain, injure then painlessly kill the fetus
Option 2	Take the Mutagenic Pill, avoid a lifetime of chronic mild pain, and cause the fetus to have a lifetime of moderate chronic pain	Take the Mutagenic Pill, avoid a lifetime of chronic mild pain, and cause the fetus to have a lifetime of moderate chronic pain
Option 3	Take neither pill and face a lifetime of mild chronic pain	—

McMahan argues that, surprisingly, this difference affects what the woman may do in each case. In *Three Choices*, he writes that “it is impermissible for the woman to take [the Mutagenic Pill], which causes prenatal injury, but permissible for her to take [the Abortifacient Pill], which causes prenatal injury but then prevents the relevant effects from occurring by causing an

¹³McMahan (2006) restates this point as part of a dilemma for legislation: “if legislation distinguishes morally between lethal and nonlethal prenatal injury, it will establish perverse incentives [to abort]; but if it does not, and treats the killing of a fetus as a serious crime on a par with injuring it, it will pose a threat to abortion rights by implicitly assigning the fetus a higher moral status than it actually has” (655).

abortion” (McMahan 2006: 636). This is because by choosing the Mutagenic Pill, the woman chooses moderate chronic pain for the fetus over mild chronic pain for herself, giving the fetus a strong future complaint when it becomes a child. The Abortifacient Pill lacks this implication, being an abortifacient. So taking the Abortifacient Pill is permissible whereas the Mutagenic Pill is not, even if the Mutagenic Pill is better for the fetus.

However, *Two Choices* is different, argues McMahan. According to him, she may not take the abortifacient in *Two Choices* even though she can take it in *Three Choices*. He writes:

Let us make the same assumptions about the woman’s preferences in [*Two Choices*] that we made in [*Three Choices*]. Where her own interests are concerned, this woman is neutral between the two pills because she finds the expected benefits to her of each pill to be about the same as those of the other. We may assume, therefore, that her interests will be unaffected by her choice; they will be equally well satisfied whichever choice she makes. *Because her interests are not engaged, the only relevant question is what would be better for the fetus.* Its interest in continuing to live, though weak, would be frustrated by [Abortifacient Pill] but not by [the Mutagenic Pill]. [...] it is impermissible, given our assumptions, for the woman to choose [the Abortifacient Pill] and therefore morally required for her to choose [the Mutagenic Pill]. (McMahan 2006: 638-9, emphasis mine)

According to McMahan, the woman must choose what’s in the fetus’s best interests because “her interests are not engaged”. The Mutagenic Pill is best for the fetus since a future of moderate chronic pain is better than death. So the mother must take it rather than the abortifacient.¹⁴

McMahan concedes that his position is paradoxical (calling it “the Pareto paradox”). However, as I will now argue, he is mistaken that the mother may not choose the Abortifacient Pill in *Two Choices*. There is no paradox. Confusion about this point comes from conflating (or ignoring) moral reasons grounded in a mother’s autonomous choices with those grounded in her interests.

2.2 Against McMahan’s Pareto Paradox

McMahan’s key premise is that only the fetus’s interests matter in *Two Choices*. He accepts this because, by stipulation, the mother’s interests are “neutral between the two pills”. He writes:

The argument I sketched for the permissibility of abortion is often thought to appeal not just to considerations of interests but also, implicitly, to intuitions about a woman’s right to bodily autonomy and the fetus’s lack of a right to the use of her body. It has not been my intention to elicit such intuitions but I have made no effort to screen them out. The reason I have not is that they count equally in favor of the permissibility of abortion and the infliction of prenatal injury. (633)

McMahan’s stipulation strains credulity.¹⁵ It is plausible only if we ignore the burdens of raising a child with moderate chronic pain. But think about what it would be like to raise such a child,

¹⁴ Wasserman seems to concur: “a woman who is truly in equipoise about whether to carry that late fetus should probably do so, since its time-relative interests in becoming a child and adult, however slight, are greater than nothing” (Wasserman 2005: 23).

¹⁵ Thanks to Cami Koepke for raising this point.

the non-trivial costs, burdens, and responsibilities that come with raising someone who is in constant and considerable physical discomfort. It's hard to imagine that these are mirrored by the costs to the woman of taking the abortifacient, particularly since McMahan does not describe those costs. At best, the intuitions that McMahan seeks to elicit are muddled by the case's incomplete description.

But even granting McMahan's stipulation, this is a deeper mistake. As I'll now argue, the mother's interests do not exhaust her moral claims.¹⁶ In particular, we cannot ignore the moral significance of the woman's plans for her pregnancy, apart from the interests she promotes by pursuing those plans. What's permissible in *Two Choices*, as we shall now see, depends on those plans or their absence, not just on her interests.

Advocates of McMahan's position may wish to resist the thesis that moral reasons grounded in an agent's autonomy can diverge from moral reasons grounded her interests. They might do so by claiming that that interests comprise autonomy because the moral significance of choice is exhausted by the agent's grounds for choice. But the thesis follows from two relatively uncontroversial claims. The first is that people can choose options that do not best promote their interests. McMahan seems to tacitly endorse this claim. It is entailed by claim that the woman ought to choose the Mutagenic Pill in *Two Choices* on the supposition that ought implies can. If she *ought* to choose the Mutagenic Pill, then she *can* choose that pill even if it's (by stipulation) not better for her than the Abortifacient Pill.

The second assumption is that facts about what a person chooses for themselves provide moral reasons.¹⁷ What we consent to, what we promise to do, and the social roles we choose to inhabit are all choices under our volitional control that affect our normative landscape. As I'll argue in the next section, whether or not a pregnant person chooses to parent affects choices like whether to take the Mutagenic Pill or the Abortifacient Pill. But more on that shortly.

These assumptions entail that a woman's choices can conflict with her interests and that when they do, they can provide reasons that countervail those provided by some of her interests. For example, a pregnant person can choose to become a parent against their interests or choose not to become a parent even if that would ultimately benefit them. In either case, the person's choice matters morally to some degree. It need not matter conclusively or decisively, being merely one moral consideration among many; I take no stand on that question. However, if a woman's choice about motherhood affects whether she should take the Mutagenic Pill or the Abortifacient Pill then so long as we haven't accounted for that choice in the final tally of moral reasons, we haven't tallied all those reasons. By ignoring what the woman in *Two Choices* wants, McMahan ignores something morally important, which affects which pill to take. He argues himself into (what is, by his own lights) a paradoxical position simply by neglecting the moral import of maternal autonomy.

We can sharpen this point. McMahan's protagonist can regard her pregnancy in three ways:

- (1) The pregnancy is wanted.
- (2) The pregnancy is unwanted.
- (3) The mother is undecided about the pregnancy.

¹⁶ Roberts (2010: 108-17) also disputes McMahan's claims about *Two Choices* on distinct grounds.

¹⁷ This is the core thesis of *voluntarism* — see Chang (2009). Humean hypotheticalists, as articulated and defended by Schroeder (2007), can also explain and defend this claim.

If (1), then it's uncontroversial that she should not choose the Abortifacient Pill. But then all sides agree that she should not take the Abortifacient Pill in this case. That may be so because because of the fetus's interests or it may be because she doesn't want to or both. The case doesn't help us decide between these claims.

If (2), then taking the Abortifacient Pill is permissible in *Two Choices*, not impermissible as McMahan contends. Although her interests are served equally well by both pills, since our interests don't directly determine our choices, she may prefer not to be a mother. She may not, for example, value the kind of (genuine!) wellbeing or satisfaction that comes from parenthood. As L. A. Paul has argued, it's extremely difficult — perhaps impossible — to appreciate the benefits of becoming a parent before becoming one. In that case, she may take the Abortifacient Pill rather than the Mutagenic Pill. Choosing not to become a mother, it seems, gives a strong reason to terminate the pregnancy, which is grounded in her autonomy rather than her interests. As a consequence, the woman does nothing wrong in taking the abortifacient when she wants to avoid motherhood, even in cases like McMahan's where she would be equally well off as a mother. Her mere *choice* to reject motherhood suffices to justify taking the abortifacient.

Of course, she can consider the fetus's interests in making her choice. If she finds those interests compelling, then she does not err in choosing the Mutagenic Pill. My claim is simply that if consideration of those interests fails to move her to choose the Mutagenic Pill and if her concerns about motherhood lead her to favour the Abortifacient, she does no wrong in choosing the latter. Only if one thinks, as McMahan does, that the fetus's interests are strong enough to overcome the mother's autonomous choice could she err. And, as we'll see in the next section, the concerns that lead McMahan to inflate fetal interests are unfounded.

If (3), then matters are less clear. The question is whether the mother is morally required to gestate absent a determinate desire to the contrary. Must she gestate even though she does not want to? Must she put the fetus's interests first precisely because she is ambivalent or undecided? It seems doubtful that she must. If a woman is unsure about whether motherhood will be a blessing or a curse, the risk of the latter can outweigh the fetus's present claims against abortion. The possibility of unwanted motherhood is a great physical, emotional, and social risk — greater, I suggest, than the fetus's interests in survival, at least during early pregnancy. So if the mother is undecided about continuing the pregnancy, she has a powerful reason against taking the Mutagenic Pill.

This may seem too quick. If she is uncertain, then the risk of a burdensome *unwanted* pregnancy is mirrored by the equal chance of a boon *wanted* pregnancy. Her powerful reason against taking the Mutagenic Pill is thus matched by a powerful reason against taking the Abortifacient Pill. So it may seem that when a pregnant person is ambivalent about her pregnancy, her reasons are in equipoise — indeed, their balanced *explains* her ambivalence.

But, contrary to initial appearances, mirrored uncertainties can provide asymmetrical reasons. The mother may be risk averse, for example, preferring the *status quo* to a coin toss between proportionately good and bad outcomes. If she chooses to take the abortifacient out of risk aversion, she does nothing wrong, *contra* McMahan.

What leads some to wrongly discount or ignore maternal autonomy? It seems that McMahan does so because, recall, "liberals must not allow their justified concern to protect the rights of pregnant women from intrusive legislation to lead them to deny or discount the gravity of the wrong involved in prenatal injury" (635). McMahan seems to presume that the *only* grounds for explaining the wrong involved in prenatal injury as illustrated in cases like the pregnant woman who loves contact sports — the wrong of making abortion an acceptable or even required

remedy to prenatal harm — involve fetal interests. In the subsequent section I'll argue that we can appeal to maternal autonomy to explain why abortion is often an *unacceptable* remedy to prenatal harm. In short, McMahan concerns about failing to appreciate the gravity of “the wrong involved in prenatal injury” are unfounded.

3. The All-Or-Nothing Problem

3.1 The Analogy

The preceding focused on the normative significance of what a woman chooses for herself and, in particular, on her choice to become a mother. Although I find it obvious that this choice, apart from the interests that it serves, is intrinsically morally significant, not all do. So I'll add to my case for this claim with an analogy to a recent discussion from Joe Horton. The analogy will also allow us to answer McMahan's concerns about attributing only weak interests to fetuses.

Other things equal, having a baby who will live a life of chronic moderate pain is impersonally better to than having no baby at all for the baby's (albeit diminished) wellbeing contributes to the good. And, other things equal, having a baby who will *not* live a life of chronic moderate pain is obviously better than having one who will, other things equal. To illustrate these claims, suppose that the woman in Wasserman's story is faced with the three following choices:

- (1) Stop playing rugby and have a child who will live a relatively pain-free life.
- (2) Play rugby and have a child who will live a life of chronic moderate pain.
- (3) Play rugby and terminate the pregnancy.

Assuming that refraining from rugby for the duration of the pregnancy harms the woman's interests less than a lifetime of chronic moderate pain harms the fetus's interests, (1) is impersonally better than (2) which is impersonally better than (3). But only (1) and (3) are permissible. This is puzzling. If (3) is worse than (2) and (3) is permissible then (2) should be too.

Nevertheless, common intuitions forbid the woman from pursuing (2). Perhaps those intuitions are mistaken, as Flanigan (2020) contends, but if we don't forbid (2) somehow, we get the problem of abortion as a remedy to prenatal harm.¹⁸ So it seems that the middling option, (2), is puzzlingly impermissible despite being better for the woman than (1), which is permissible, and better for the fetus than (3), which is also permissible. What could explain this?

¹⁸ Intuitions about the impermissibility of prenatal harm can be doubted. Flanigan (2020) writes that “popular intuitions about pregnancy are potentially colored by unjustified prejudices. Drug users, disabled people, obese people, poor people, and women—especially women who have sex—have historically been denounced for their permissible choices when denouncement was unwarranted. These considerations debunk or at least call into question intuitions that prenatal injury is criticizable” (16).

However, these intuitions cannot be debunked strictly on gender lines. For example, just as a willing mother should refrain from smoking if her smoking sufficiently harms the fetus, so too should a willing father refrain from smoking if his smoking sufficiently harms the fetus. Now, smoking may fall under Flanigan's category of drug use. But these intuitions persist even absent drug use. Suppose that a willing father's profession requires him to handle chemicals that endanger fetuses and that the father likes to work from home since it saves him from a long and expensive commute. It seems to me that, when living with a pregnant person, he cannot handle the chemicals from home given his intention to parent despite the inconvenience of the long, expensive commute. This intuition cannot be debunked with Flanigan's observations.

The key lies in the fact that the problem is a special case of a more general one. Identifying the problem's most general form and its solution allows us to apply that solution to the problem of abortion as a remedy to prenatal harm. Horton (2017) presents a case with a similar structure. Suppose that two children are trapped in a collapsing building. You can save both (or either) at the expense of your arms being crushed. Or you can do nothing, allowing the children to die but saving your arms. Given this story, the following seem plainly true:

- (4) It is morally permissible for you not to save the children.
- (5) It is morally wrong for you to save just one child.

As Horton writes, "(4) is plausible because of the sacrifice that saving the children requires. (5) is plausible because saving both children requires no greater sacrifice than saving only one" (94). However, given the background facts, (4) and (5) imply:

- (6) You ought to save neither child rather than save only one.

This implication is odd. After all, saving one child is impersonally better than saving none. Horton continues:

Surely the best moral view would not discourage you from saving the one child. This is just one instance of a more general problem. There are many cases in which, by making some great sacrifice, you could bring about either a good outcome or an even better outcome. In some of these cases, it is very plausible both that it is permissible for you to bring about neither outcome and that it is wrong for you to bring about the less good outcome. But together, these claims seem to imply that you ought to bring about neither outcome rather than the less good outcome. And that seems very counterintuitive. We can call this *The All or Nothing Problem*. (Horton 2017: 94)

His solution conditions certain obligations on our willingness to make the relevant sacrifices.¹⁹ If we are unwilling to sacrifice our arms to save the children, then we may refrain from saving them. But if we are willing to make that sacrifice to save *one* child, we cannot claim that the price of sacrifice is a strong enough reason not to save the *other* child. So if we are willing to save one, we must save both. Consequently, Horton rejects (4). The permission not to save the children is not unconditional. It holds only when one is unwilling to sacrifice one's arms.

The general shape of Horton's solution applies to the choice between (1-3). In both Horton's case and Wasserman's story, the impersonally best option (save both children; stop rugby to have the baby) is merely permissible but not required since it involves great sacrifice (the sacrifice of both arms; the sacrifices involved in parenthood). Moreover, Horton's (6) closely resembles the problem of abortion as a remedy to prenatal injury. Consider:

- (6) You ought to save neither child rather than save only one.

The general form of the claim is "you ought to do [what's worst] rather than [what's middling but objectionable]". In Horton's case, what's worst is saving neither child and what's middling

¹⁹ "When bringing about an outcome O would require us to make a great sacrifice S, we can normally appeal to S as an adequate justification for not bringing about O. But if we are willing to make a sacrifice that is not significantly smaller than S to bring about an outcome that is not significantly better than O, and we do not have adequate agent-relative reasons to favour this other outcome, we cannot reasonably appeal to S as a justification for not bringing about O. So if there is no other adequate justification for not bringing about O, we ought to bring about O." (Horton 2017: 98)

but objectionable is saving only one. In Wasserman's case, what's worst is abortion and what's middling but objectionable is prenatal injury. Substituting like for like yields:

(7) You ought to terminate the pregnancy rather than injure the child.

And this looks like precisely the kind of claim that leads to worries about abortion as a remedy to prenatal harm.

Finally, saving both of the children and continuing to gestate without harming the fetus are ordinarily *supererogatory*. Indeed, this observation is the foundation of Flanigan (2020) defense of the general permissibility of prenatal harm. However, if Horton's argument is sound, then being willing to perform the supererogatory enjoins new obligations, which conflict with the general permissibility of prenatal harm. Just as being willing to save one child requires one to save both, being willing to bear the child means refraining from contact sports, *contra* Flanigan.

Thus, Wasserman's protagonist can justify her choice to play rugby only if she is unwilling to make the sacrifices involved in having a child. However, if she is willing to make them, then she cannot use the burdens of pregnancy as justification against the claims of the fetus. Because she intends to carry the fetus — recall, “consider [a woman who] loves contact sports, and continues to participate despite her intention to bear the fetus and her knowledge that those sports place it at grave risk of impairment” (27) — she violates a duty to the fetus to protect it from harm. Were she willing to terminate her pregnancy, she would lack this obligation.

What is this obligation's strength? Surely some risks during pregnancy are acceptable. Mothers need not sacrifice everything to avoid an iota of harm to the fetus. Nevertheless, if popular intuitions about the morality of prenatal harm are probative, at least some harms to the fetus by willing mothers are impermissible. So we must draw a line between sacrifices that are required by parenthood to avoid a particular harm and ones that are not. But as Flanigan writes, “it is difficult to draw [this] line, since all pregnancies involve some level of avoidable risk” (2020: 15).

It's natural to tie the obligation's strength to the degree of harm at risk. In the case immediately above, the harm in question is a lifetime of chronic moderate pain, which, it seems to me, is harmful enough to forbid the woman from playing rugby for the duration of the pregnancy. We can generalize the account in a rough fashion to accommodate greater and lesser harms: if the harm done to a child by activity X forbids the mother from doing X, even if it requires sacrifice Y then, if she is willing to be a parent to the fetus and X would cause the fetus similar harm, then she is also forbidden from pursuing X even if requires sacrifice Y. As a result, if the harm done to a child by second-hand smoke requires the mother to quit, and if second-hand smoke causes similar harm to the fetus, then the mother is similarly required to quit smoking during pregnancy. However, if a mother is not morally required to sacrifice her arm to prevent her child's leg paralysis, then she may forgo a treatment during pregnancy required for her fetus to walk when it becomes a child if the treatment will cost her her arm.

3.2 Two Possible Explanations of Voluntarist Parental Role Obligations

We must not underestimate what it takes to be genuinely willing to parent, at least in the sense that I intend. Willing parenthood is not a mere passing fancy or a phase. Consider the analogy above. To be under an obligation to save the children, in Horton's case, you have to be resolutely willing to lose your arms. A would-be hero who charges in with the aim of saving the children but who faints or flees at the first flame hasn't fallen short of her obligations. You are not required save the children if you are unwilling (even if you overestimate your own courage).

Likewise, even if you fancy being a parent, you don't count as willing to be a parent, at least on my usage, unless you're also willing to accept the sacrifices, challenges, and demands of parenthood. As Kant writes in the *Groundwork*, "whoever wills the end also wills the indispensably necessary means to it that is in his control" (4:417). As any parent will attest, you can parent only if you sacrifice. So whoever wills parenthood on themselves also wills the sacrifices that partly constitute parenthood.²⁰

A willingness to sacrifice could change our obligations in two ways: it could add a reason for, for example, saving the second child or refraining from rugby or it could remove a reason against doing those things. In both cases, a willingness to sacrifice improves the moral case for doing them. The first explanation holds that, for example, your willingness to sacrifice your arms to save the first child is a reason to save the second. This tips the balance of reasons from merely permitting one to save the second child to positively requiring that one does. Similarly, a woman's willingness to become a parent is a reason to protect the fetus from harm. When a woman is unwilling to be a parent, she lacks this reason — that's part of what makes abortion permissible.

The second way is through *undercutting defeat*. A fact can be a reason to do something only contingently. For example, the fact that the wall appears red is a reason to believe that it's red. But that fact's status as a reason can be *undercut*: if you learn that you're wearing red-tinted goggles, then the fact that the wall appears red ceases to be a reason to believe that it's red. It is undercut by the fact that you're wearing red-tinted goggles.

The reason against saving either child is that it will cost you your arms. However, according to this first explanation, a willingness to lose your arms to save one child *undercuts* the sacrifice's status as a reason against saving the second. When you're willing to sacrifice to save one child, there is, literally speaking, no reason for you not to save the other. So the second child's interests in being saved are decisive. Similarly, your willingness to bear the burdens of parenthood *undercuts* the reason against the fetus's interests provided by those burdens. If you're willing to parent the child, then you have no answer to the fetus's complaint against the harm you will cause to it by engaging in contact sports. Your answer is undercut by your willingness to be a parent.

These two explanations paint different pictures of the grounds of parental obligations. The first explanation is *agent-centered*, where the grounds of the mother's obligation to protect the fetus lie in her attitudes, particularly her willingness to be a parent. The second explanation is *patient-centered*, where the grounds of the mother's obligation lie, ultimately, in the fetus's interests. According to the second explanation, the mother's willingness to parent explains why she is particularly responsible for discharging the obligation to protect the fetus but it does not explain the obligation itself, which obtains because of the fetus's interests.

²⁰ Margaret Little (1999) makes similar points about the moral significance of 'deeper relationships' between parent and child, beyond the biological claims "that provide children with a moral claim that the person so related be open toward developing a deeper relationship" (308).

We need not decide between these explanations.²¹ They are compatible, perhaps each capturing a piece of the truth. In either case, the woman's willingness to be a parent grounds a duty to protect the fetus from harm. Consequently, advocates of the Right Explanation should respond to concerns about abortion as a remedy for prenatal harm, such as those raised by McMahan and Wasserman, *inter alia*, by appreciating that some parental duties originate in a woman's willingness to parent. That is, the full explanation of why the woman in Wasserman's story acts wrongly lies in the special duties she incurs by choosing to parent. Given that choice, she cannot use the burdens of pregnancy, such as refraining from contact sports, as reasons against the fetus's interests. The fetus's interests "win out" in that case not because of their relative strength, McMahan seems to suggest, but because the woman's decision to bear the fetus limits her claims against it

Challenges to this proposal originate in cases where prenatal harm is seemingly impermissible but willing parenthood is absent. Such cases seem to show that the proposal is too weak to explain the impermissibility of prenatal harm in cases like Wasserman's. Fortunately, these cases can be rebutted.

Since a willingness to parent is harder to satisfy that it may appear at first, many parents don't genuinely will parenthood. Do they lack the corresponding duties? No. The duties of (unwilling) parents of children don't evaporate wholesale; they simply have different grounds. Unwilling parents may have duties to children who are in their care simply because they're uniquely positioned to care for them. But unwilling parents are the kind of parents who lose their rights. The main duty of a sufficiently unwilling parent may be to find loving adoptive parents for their child.

Likewise, unwilling pregnant mothers have fewer duties than their willing counterparts. If Wasserman's protagonist is not a willing parent, perhaps because she is resolutely unwilling to give up rugby to protect her fetus, then there is cause for her to terminate the pregnancy, particularly before she causes her fetus harm. But this could hardly be called pressure to abort the fetus to remedy that harm. She isn't a willing mother who, filled with regret for injuring her fetus, feels compelled to terminate her pregnancy to avoid the future child's complaint. The pressure to terminate the pregnancy comes primarily from the fact that the woman does not genuinely want to be a mother because of the sacrifices involved, regardless of whether she has harmed her fetus.

Surrogates, for example, become pregnant without the intention to parent the fetus, so the proposed account seemingly fails to explain why it's wrong for surrogates, for example, to play contact sports when pregnant. However, the impermissibility of prenatal harm in those cases can be explained by the surrogate's duty to protect the fetus on behalf of the adoptive parents. The adoptive parents have a duty to the fetus in virtue of their intention to parent. The surrogate is the parents' agent, acquiring their parental duties. So the surrogate has a derivative duty to protect the fetus in virtue of her arrangement with the adoptive parents.

²¹ Because the patient-centered approach resembles Harman (1999)'s Actual Future view, it may be vulnerable to similar worries. For example, suppose that, unbeknownst to her, Wasserman's protagonist will suffer a miscarriage unrelated to her love of contact sports. As such, unbeknownst to her, her fetus does not actually have a future. Harman's view and the patient-centered approach seem to imply that Wasserman's protagonist can engage in contact sports, even if she fully intends to carry the fetus to term. I find that counterintuitive. The agent-centered approach does not have this implication. Harman briefly touches on something close to this point on p.316 and again on p.319, writing, "The Actual Future Principle does not hold us to standards we cannot meet." But this does not respond to the worry just sketched. Surely Wasserman's protagonist can meet the standard of avoiding contact sports.

Consider a different challenge. Suppose that the woman in Wasserman's story is pregnant but, unlike in the story, she does not intend to become a mother. She is scheduled to terminate the pregnancy on Friday, but she has a rugby game on Thursday. Can she play?

According to the account, whether she can play depends on whether her claim to playing rugby, as an exercise of her autonomy, is stronger than the fetus's claim against harm. Both claims can vary in strength. Perhaps it's the World Cup of Rugby championship match — her life's project — then it may be permissible for her to play. Similarly, if the fetus is sufficiently advanced to feel pain, then the fetus's claims may outweigh the woman's. In any case, what this woman does is less objectionable than what Wasserman's protagonist does, since only the latter has a parental role obligation to protect the fetus. Moreover, when she seeks the abortion, she cannot be described as seeking an abortion to remedy harm to the fetus incurred during sports. She wants to terminate the pregnancy *tout court*. It just so happens that she cannot do so before risking harm to the fetus.

4. Voluntarism About Parental Duties

Horton writes that “because what we ought to do does not normally depend on what we are willing to do, [his solution to the all-or-nothing problem] might seem counterintuitive” (97). Perhaps he's right, but the idea that what we ought to do *as parents* depends on whether we're willing to be parents is independently plausible. Indeed, many philosophers argue on independent grounds that, roughly, intentions to parent suffice for possessing certain parental role obligations.²² These ‘voluntarist’ accounts contrast with *causal* accounts according to which parental rights and duties derive from causing someone to exist. Consequently, the solution to the problem of prenatal harm that I've proposed offers extra support to these voluntarists about parental duties and enjoys additional support from them.

Voluntarism about parenthood can be divided along two axes: first, whether the intention to parent is *sufficient* or *necessary* (or both) for parenthood and, second, whether the intention to parent grounds the *rights* or *duties* (or both) of parenthood. The more controversial dimensions of voluntarism involve the distinct ideas that intentions to parent suffice for the *rights* of parenthood (since rights enable desires) and that such intentions are *necessary* for the duties of parenthood (since duties curtail desires).²³ The account defended here supports only the limited claim that the intention to parent *suffices* for certain *duties* of parenthood. Although it supports only a limited form of voluntarism, this is not a *trivial* form of voluntarism for not all role-based obligations have voluntarist roots. For example, I can't be sanctioned for Exxon's many wrongdoings in virtue of wanting to be its CEO. But I can be sanctioned for harm to my child in virtue of wanting to be their parent.

Nevertheless, it is plausible that the rights and duties associated with a special role stand or fall together. I find it appealing to think that they are mutually entailing since the role is constituted by those special rights and duties. Consequently, the account defended here provides qualified support for a full-blooded voluntarism where the intention to parent is necessary and sufficient for the duties and rights associated with parenthood.

Finally, the proposed account and its analogy with the All-or-Nothing Problem illuminates not one but two potential explanations of why voluntarism about parental role obligations is true.

²² For discussion of ‘voluntarism’ or ‘intentionalism’ about parenthood, see Hill (1991), Bayne and Kohlers (2001; 2003), Brake (2005; 2010), Pearson (2010), Wasserman (2009), DeGrazia (2017), and Richards (2017).

²³ For criticism, see, e.g., Prusak (2011a; 2011b). For defense, see Brake (2010).

The first explanation is *agent-centered* in the sense that it explains why there is a duty to protect the fetus in the first place using facts about the agent. In this case, the fact that the agent is willing to be a parent grounds certain parental role obligations, particularly the duty to protect the fetus from harm.

An important challenge for this account is explaining why duties grounded in the particularities of one's will are moral. After all, such duties will vary from agent to agent as a function of differences between what those agents are willing to do or be. So these duties will be so-called *partial* or *agent-relative* duties.²⁴ However, moral duties are thought to be impartial or agent-neutral — think of the categoricity of Kant's categorical imperative or the universality of Parfit and Nagel's agent-neutral reasons.²⁵ As a result, advocates of the agent-centered approach face the challenge of explaining why parental role obligations are genuinely moral obligations, as they seem to be, instead of merely rational obligations such as the obligation to, for example, pursue the necessary means to one's ends.

This is reason to consider the second, *patient-centered* account of parental role obligations sketched above. The challenge for such accounts is explaining why parental role obligations vary between persons if facts about the patients of such obligations do not. For example, from both my perspective and yours the facts about my child are the same. But only I, it seems, have obligations to my child. How is that possible if the obligation, which varies between agents, is grounded in facts about the child, which do not vary? How can I possess and you lack a special obligation to my child if that obligation to is grounded in facts about the child?

The second account allows that everyone has a *prima facie* duty to protect my child from harm, even if that involves great sacrifice. However, you have a special excuse that exempts you from fulfilling those duties: you're not willing to parent that child. That excuse explains why you are not required to make the same sacrifices that I am to protect the child from harm. Conversely, because I am willing to parent my child, I have no such excuse when I fail to prevent harm to that child. So I am particularly liable to an obligation to protect them and you are not.

This paints a very different picture of the nature of parental role obligations than the agent-centered account. According to it, there is reason for *everyone* to protect my child from harm even if that involves great sacrifice. So seemingly *partial* duties, such parental duties, are actually *impartial*. The reason why it seems that only parents of a child have these demanding parental duties is that the parents lack an excuse for not fulfilling them that everyone else has. In a certain sense, non-parents of a child are 'shielded' from their agent-neutral, impartial obligations to that child by their unwillingness to parent them. In other words, non-parents, in virtue of being non-parents, always have a strong excuse from parental role obligations to others' children. While this account is more complex than the agent-centered account, it has the advantage of allowing that parental role obligations are agent-neutral obligations, which is consistent with parental role obligations being moral obligations.

As I mention above, although each account suffices to explain why a willingness to parent leads to certain parental role obligations, we needn't choose between them. They are compatible. Consequently, rather than competitors, they are complementary tools in the voluntarist's toolbox, expanding the range of grounds for various voluntarist obligations of which parental role obligations are a special case.

²⁴ For example, Sidgwick (1874) and Moore (1903) argue that consequentialism and partial duties are incompatible. Their incompatibility can be traced to the fact that facts about value are agent-neutral but partial duties are not.

²⁵ See Nagel (1970) and Parfit (1984).

5. Conclusion

I began with the observation that prenatal harm seems objectionable in a way that similar harms are not — that while you should risk an individual's moderate permanent harm rather than their death, expectant mothers, when faced with that choice, may seemingly risk either. I sharpened this observation with a dilemma from McMahan (2006): if a fetus's claim against prenatal harm is only weak, then it seems we have an obligation to abort the fetus to remedy that harm. However, if a fetus's claim against prenatal harm is strong, then abortion is less permissible than many maintain.

I argued that we can embrace the first horn of the dilemma by connecting the wrongness of prenatal harm to duties arising from the intention to parent. I motivated this connection first by criticizing McMahan's account for failing to appreciate the connection between maternal autonomy and prenatal harm and then by drawing an analogy to Horton's all-or-nothing puzzle. According to the view defended here, prenatal harm is especially wrong when it violates the voluntarist duty of a parent towards the wellbeing of their child. This account allows us to explain why prenatal harm is often particularly wrong while avoiding worries about using abortion as a remedy to prenatal harm.

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