Response to Andrew Peach

The True Source of Parental Obligations

R. Mary Hayden Lemmons

ABSTRACT: After discussing Dr. Peach's demolition of the pro-abortionist identification of choice as the ground of parental obligation, this paper argues that his identification of biological relatedness as that ground needs further development. For biological relatedness does not ground parental obligations in cases of *in vitro* fertilization, since the lab technician need not obtain eggs and sperm from living humans. In such cases, it is the lab technician who causes the conception. Hence, I argue that reproductive causality, or "child-making," is the true source of parental obligation.

IN HIS CONFERENCE PRESENTATION "On the Grounds of Parental Obligation," Andrew Peach undertook to demolish the ethical voluntarism of pro-abortionists. He did this in four steps. First, he identified choice as the ground of obligation for pro-abortionists in general and for Judith Jarvis Thomson in particular. Second, he evaluated that ground and identifies various theoretical inadequacies. Third, he argued that ethical voluntarism cannot ground parental obligations at all. Fourth, he argued that the proper ground of parental obligations is the voluntary sexual act. In his revised paper, Peach strengthens his analysis by pointing out that biological relatedness is the proper basis of parental obligation.

For the most part, his arguments against pro-abortion voluntarism remain interesting and insightful. For instance, he perceptively notes that not all obligations are based on choices: children have obligations to parents, and the unintended broken window obligates the golfer. Hence, pro-abortionists cannot simply assume that unintended pregnancies do not also bind the parents.

Neither may pro-abortion voluntarists claim that choice suffices for obligations. Peach is correct when he argues that the will cannot bind itself, for ethical voluntarism identifies the obligation as nothing other than a previous choice that can be reversed by a new choice. If changing one's mind changes one's moral obligations, then there can be no obligations that bind irrespective of one's choices.

Late-term abortions exemplify ethical voluntarism's inability to impose obligations through choice. According to pro-abortion voluntarism, obligations chosen in early pregnancy dissipate when the pregnant women later chooses to abort. Thus, Peach points out, pro-abortion voluntarism makes it impossible for a pregnant women to make a choice that would ground maternal obligations: any choice she makes to promote a healthy fetus can be reversed in favor of abortion. This means that the pro-abortionists cannot consistently claim that choice generates parental obligations.

Just as pro-abortion voluntarism cannot generate maternal obligations during pregnancy, Peach argues that it cannot generate maternal obligations, either at birth or at the baby's homecoming. Not at birth, because birth is not a chosen act but something undergone. And not at homecoming, because if at homecoming, then no child would have any claim on parents and child abandonment would not be immoral. With this argument, I fault neither Peach's conclusion nor his insight that parental obligations do not originate with a baby's homecoming, but only his denial that childbirth involves significant maternal acts, such as the choice to push or not to push. This is a rather minor cavil in this context,[1] *since these choices, or any other maternal act in childbirth, are not necessary for establishing maternal obligations: if they were, delivery by C-section would suffice to pre-empt any parental obligations.*

If C-sections cannot pre-empt parental obligations and if choice cannot establish parental obligations, then parental obligations must be either natural or somehow established prior to birth. Could these obligations be established by the very act of voluntary sex?

On the one hand, this seems most reasonable since voluntary sex is typically the cause of new life. On the other hand, this ground means that rape victims who conceive a child would lack maternal

obligations. If so, it would not be a license to abort, since general obligations to humanity remain. Nevertheless, it would mean that there would be mothers (albeit of the pre-born) who would lack maternal obligations. But if this were the case, then it would be gratuitous to hold that parental obligations exist even when conceptions occur against the will of those engaging in voluntary sex. Either the biology of parenthood necessarily generates parental obligations or it does not.

But what happens when biology is impotent without the activities of a lab technician who uses a needle to penetrate the egg and cause conception? Are the children generated through in vitro fertilizations, or cloning, without parents until "adopted" by the surrogate mother? Or is the one who causes the conception the parent? If not, then a doctor who implants an embryo in a catatonic woman and then removes the resulting infant by Caesarian section nine months later would have no parental obligations for that child—no one would. Perhaps, given this problem, Peach would be willing to revise his ground of parental obligations from the biological bond established by sexual reproduction to the causes of conception.

To identify the causes of conception as having parental obligations is to place the source of parental obligations within the natural law tradition. This tradition holds that obligations are nothing other than the recognition that only certain responses are appropriate for certain truths. For instance, the truth about human beings binds the will to respect them and their dignity. This is the reason why the right to life and the right to self-determination have framed the abortion debate: both rights are based in human nature and both rights demand the will's allegiance.

Thus, the question arises about whether rights are incommensurable or whether there is some principle for adjudicating conflicting rights. This question, although popular, presupposes inescapable conflict between rights. At first glance, this presupposition receives the support of American history. For instance, the clash between the rights of King George and those of the American colonists helped ignite the Revolutionary War, whereas the clash between the rights of slaves and those of their masters helped

ignite the Civil War. But further reflection shows that these wars enabled Americans to realize, first and foremost, that the rights of some cannot be promoted at the expense of others; second, that rights are not a matter of choice but of human nature; and third, that all political and legal rights are based upon the three God-given inalienable rights listed in the Declaration of Independence, namely, life, liberty, and the pursuit of happiness. These basic rights are not separable and independent, but interdependent. And, their interdependence illumines their parameters. For instance, the pursuit of happiness can not justify compromising the liberty of others as liberty cannot justify depriving others of life.

From this vantage point, the pro-abortion movement can be seen as dividing what ought not be divided. This movement says that liberty can oppose life and that the pursuit of the mother's happiness can be at the expense of the very young. If these divisions were to be applied beyond the parameters of prenatal life, the rule of law would be ended because law requires consistency and consistency requires that all persons receive equal treatment under the law. For this reason, Peach is correct in holding that the pro-abortion position requires that the fetus be a non-person.[2] *Without this fiction, the rule of law so essential to American democracy cannot endure.*

However, pro-abortionists like Judith Jarvis Thomson are increasingly ready to acknowledge the humanity and the personhood of the fetus, probably because developments in biology increasingly make their denial look not only naive but ignorant. As a result, pro-abortionists are bringing the country to the brink of a political chasm where we must either return to our earlier recognition of abortion's immorality or renounce the rule of law and its requirement of equal treatment.

This time of decision may be rapidly approaching. A few years ago, according to Richard Stith,[3] *in Stenberg v. Carhart*, the U.S. Supreme Court struck down Nebraska's partial-birth ban by declaring that there were no significant differences between late-term and partial- birth abortions. This means that the fictional difference between the fetus and the newborn is collapsing in such a way that neither are being respected as human persons. If this trend continues,

we can expect the legalization of infanticide and a widespread conviction that human beings need not be treated equally under the law.

Peach is to be commended for drawing attention to an area where equal treatment under the law has already somewhat eroded, namely, the dichotomy with which mothers and fathers are treated. Mothers may opt out of their parental obligations through abortion, while fathers have no such option. Indeed, those who cause pre-natal death can be prosecuted for homicide. Furthermore, men who become fathers are still responsible for child support, even when they never sought to become fathers.

In his conference paper, Peach explored whether the father's obligation of child support can be grounded upon an indirect duty to the mother, rather than upon biology. He concluded that such a ground is untenable, primarily because it cannot be subsumed into a more general obligation, such as those concerning property or pets.

On this point, I am unpersuaded. Relationships do generate unique obligations: friends must assist friends in ways that they are not obligated to assist strangers. Furthermore, it seems to me that sex is essentially relational and that as such it generates special obligations between the partners. The conception of a child not only increases those obligations between the partners but also places parental obligations upon the partners. So, it seems to me that child support fulfills not only a parental obligation but also an obligation to assist a sexual partner.

In conclusion, although I have praised Peach's success in demolishing choice as the basis for parental obligation, I have questioned some of his arguments. In particular, I have disagreed with his identification of biological relatedness as the source of parental obligations. For biological relatedness does not ground parental obligations in cases of *in vitro* fertilization, since the lab technician need not obtain eggs and sperm from living humans. In such cases, it is the lab technician who causes the conception. As the reproductive cause, the lab technician incurs parental obligations, since it is reproductive causality that is the proper source of parental obligation.

NOTES

1. I do not mean to suggest that there is not a significant difference between Dr. Peach and myself on the nature of obligation. I hold that obligations are dictates of reason about the proper responses to certain truths, whereas in his conference presentation he asserted that obligations have three essential features: (1) obligations are prior choices (2) that have been actually executed as acts and (3) that are naturally or logically or conventionally connected to obligations.

2. Peach argues that Thomson is wrong to hold that the personhood of the fetus is compatible with the belief in an absolute right to abortion: "So, if nothing else, the foregoing line of argumentation has at least backed the pro-choice movement or the pro-choice philosopher into a corner: Either deny the personhood of the fetus or concede that you have philosophically undermined the notion of parental obligations." After all, obligations are owed only to persons. Peach also states: "And if one cannot will a good for a non-person, then one cannot be obligated to a non-person, for to fulfill an obligation to a person is to will a good that is due him."

3. "Location and Life: How *Stenberg v. Carhart* Undercut *Roe v. Wade*," *William and Mary Journal of Women and the Law* 9/2 (2003): 255-78.