

The Right to Choose an Abortion

Opponents of abortion often defend their position by claiming that the fetus is a person. What they mean, presumably, is that the fetus shares those attributes, whatever they may be, the possession of which by normal adult human beings grounds the special presumption against killing them, making killing them considerably more difficult to justify than, for example, the killing of animals. Some defenders of abortion argue in response that, because of certain features of the relation between the fetus and the pregnant woman, abortion is permissible in many cases even if the fetus is a person. The best-known argument of this sort is that advanced by Judith Thomson which appeals to an analogy between being pregnant and being involuntarily attached to an unconscious violinist to whom one must remain attached for nine months if he is to survive.¹ More recently, a similar strategy of argument has been developed with unprecedented thoroughness and sophistication in Frances Kamm's *Creation and Abortion*.² The argument is rigorous, penetrating, and subtle throughout and Kamm is

A review essay of F. M. Kamm, *Creation and Abortion: A Study in Moral and Legal Philosophy* (New York: Oxford University Press, 1992). Parenthetical page references in the text are to this work. Much of the argument in this review is drawn from a manuscript, also called "The Right to Choose an Abortion," written in 1991 and presented at the University of California at Irvine and the University of Illinois. In preparing this review, I have benefited from comments on the earlier paper by Marcia Baron, Michael Gorr, and Gregory Kavka. I have also been helped by Peter Unger's comments on this review. I presented a draft of this review at the Pacific APA meetings in March 1993, and am very grateful to Frances Kamm for her polite and thoughtful responses on that occasion. I regret that spatial constraints prevent me from citing and responding to her reactions with the care they deserve.

1. Judith Jarvis Thomson, "A Defense of Abortion," *Philosophy & Public Affairs* 1, no. 1 (Fall 1971): 47–66.

2. Kamm's exposition is often highly convoluted and her prose obscure, occasionally to the point of impenetrability. Hence my presentation of her views must sometimes be treated as interpretative or reconstructive rather than paraphrastic.

impressively fair in her willingness to take seriously a variety of considerations that are too readily dismissed by ideologues on one side or the other in this often polarized debate. Hers is, I believe, the best book on abortion. Yet in what follows I will suggest reasons for doubting that her defense of abortion succeeds. The problem is not that the considerations she advances are without force. They are, on the contrary, largely correct. What is doubtful is whether they are sufficient, on their own, to make abortion permissible. This, of course, does not make them irrelevant. After all, the claim that the fetus is not a person may also be an insufficient ground for the permissibility of abortion. But if, as I believe, there is a convincing argument that the fetus is not a person, it could be combined with the considerations Kamm advances to yield a wholly decisive case for the permissibility of abortion in virtually all cases.³ Hence the doubts I will raise apply only to Kamm's ambition of mounting a robust defense of abortion while granting that the fetus is a person.

I. THE CUTOFF ABORTION ARGUMENT

Kamm's initial argument, which she calls the *cutoff abortion argument*, consists of five "conditions" that, if satisfied, together justify killing the fetus. According to Kamm, (1) the fetus's need alone does not impose a duty on the pregnant woman to provide it with life-supporting aid; (2) nor does the woman have a special moral reason to aid the fetus. Moreover, (3) in killing the fetus, the woman (a) would deprive it of life that it has only as a result of her support, (b) would not harm it relative to prospects it had prior to its attachment to her, and (c) would not deprive it of anything that she has provided that it could retain independently of her. To these Kamm adds the claim that (4) the cost to the woman of supporting the fetus is sufficiently high that, given the other conditions, it can be permissible to kill the fetus in order to avoid it. Of course, there is some level of cost that the woman ought to accept rather than kill the fetus. If there were an alternative means of ending her support of the fetus that would involve no more than this cost, then she ought to adopt that means rather than kill it. Hence the argument applies only if (5) there is no such alternative. In short, if the

3. I argue elsewhere that killing a fetus is morally quite unlike killing a child or adult, primarily because the fetus is not harmed by death to anything like the degree that a child or adult normally is, and indeed in most abortions is not harmed at all. This claim might be articulated, although crudely and somewhat misleadingly, by saying that the fetus is not a person. See my *Killing at the Margins of Life* (New York: Oxford University Press, forthcoming).

fetus will die without the woman's aid and if she has no duty to aid it at a high cost to herself, then she may kill it if that is necessary to avoid the cost of aiding it.

Condition (3) requires elucidation. (3a) and (3c) make the important point that, because killing the fetus deprives it only of what it now has and can retain only with the woman's support, and since—as conditions (1) and (2) assert—the woman has no duty to provide that support, killing it deprives it only of what it has no right to have or retain on those terms (p. 80). (3c) also stresses that, because abortion involves killing the fetus in order to avoid having to aid it, it shares a necessary feature of letting a person die, which is that he loses only what he could have retained with one's aid (p. 31). While Kamm has a counterexample that blocks the tempting inference that killing the fetus is justifiable whenever letting it die would be (pp. 31–33), (3c) does suggest that killing via abortion is morally more like letting die than killings that do not have this feature.

It is, however, unclear how important this is. For the distinction between killing and letting die seems to lack its normal significance in the case of abortion. Most abortion techniques kill the fetus by injuring it in the process of removing it. But it is normally possible to remove the fetus without injuring it. Such an abortion technique, which I call *merely extractive*, would not kill the fetus but would allow it to die.⁴ Yet those who oppose abortion would not accept that switching to the exclusive use of merely extractive techniques would make abortion permissible or even significantly less objectionable. I am uncertain why there is so little difference between killing and letting die in this case, but it is doubtful that it is because (3c) obtains. Consider Thomson's analogy with the violinist. While we accept that it would be permissible to disconnect oneself from the violinist without injuring him, thereby letting him die, we are reluctant to concede that it would be permissible actively to kill him—for example, by dismembering him—particularly if it were possible (as it is in the case of abortion) to disconnect oneself in a way that merely allowed him to die.⁵ Thus the usual difference between killing and letting die is manifest in this case, yet (3c) holds in this case as well.

The relevance of (3b) is less clear. If the claim is simply about the fetus's *preattachment* prospects, then (3b) merely restates (3a). But Kamm often elucidates (3b) by stating that killing the fetus does not harm it relative to

4. See my "Killing, Letting Die, and Withdrawing Aid," *Ethics* 103 (1993): 250–79.

5. *Ibid.* Thomson and Kamm appear, in my view mistakenly, to regard merely unplugging oneself as an act of killing.

its *preconception* prospects, noting that it is “no worse off being dead because it was killed than if it had never existed” (p. 80; see also pp. 89, 168). It is unclear, however, why this matters; for it is true of virtually *all* killings that they are not worse for their victims than never existing would have been. Moreover, even if we consider causing someone to exist and then killing her as a package, noting that causing her to exist and then killing her are together not worse for her than not causing her to exist, this fact is wholly irrelevant to the morality of killing. Killing has to be compared with the victim’s continuing to exist, not with her never existing.

The significance of (3b), it seems to me, is that it is critical to the defense of condition (2), to which I now turn. Critics have challenged Thomson’s violinist analogy on the ground that, while the agent is not morally responsible for the violinist’s need for aid, the pregnant woman is, in most cases other than those involving rape, at least partly morally responsible for the fetus’s need for aid since she and her sexual partner have caused it to exist in its dependent condition. This fact seems to ground a special moral reason to aid the fetus. If so, condition (2) is not satisfied. Kamm replies that, “if the fetus that is deliberately created is not harmed by living with the need for support and dying without that need met—relative to never living, then this case is not analogous” to ordinary cases in which one person causes another to need aid (p. 90). But she does not say why this failure of parallelism is important. It seems to me that (3b) provides the explanation. In ordinary cases, an act that causes a person to need aid will harm that person unless the aid is provided. Thus the agent’s duty to provide aid is a corollary of her duty not to cause harm. She must provide aid in order to prevent her earlier act from causing harm. But, if the brief life that a fetus has before being aborted is not worse than no life at all, then the act that caused its need for aid (that is, the act that caused it to exist) was not bad, or worse, for it, *even* if it is later aborted.⁶ Hence the ordinary reason for providing aid for which one has caused a need does not apply, since the woman need not aid the fetus to prevent her earlier act from harming it.⁷

6. It might be held that the reason why the act cannot be worse for the fetus is simply that it could not be better for it if the act were not done, since in that case it would never exist. This is not my claim. I believe that an act that causes a person to exist can be *bad* for him even though the alternative is that he would never exist. But this is the case only when the life he has is not worth living.

7. This argument is taken from the earlier paper on which this review is based. If I interpret the passage quoted above and the relevance of (3b) correctly, then Kamm is making much the same point.

This defense of condition (2) depends on the claim that causing the fetus to exist is not bad for it, even if it will die before birth. But, it might be argued, causing the fetus to exist *is* bad for it, since it makes it inevitable that it will suffer a premature death. Of course, a great many lives end prematurely, yet we do not regard this as a reason not to cause people to exist. The difference, it might be argued, is that in most cases death, even if premature, comes sufficiently late that the life contains enough good to outweigh the badness of death. In the case of fetal death, however, the death is especially bad, since so much life is lost, while the life has been too short to contain more than a little good. Hence the badness of the death outweighs the goodness of the life.

This, however, is a mistake. Death, when it is bad, may be bad for several reasons, principal among which is that it deprives its victim of possible future goods.⁸ But the evil of being deprived of more good life does not weigh against and hence cannot outweigh the goods that a life contains. For the failure to get *more* of a good cannot itself negate the value of getting *some*. Hence the fact that a life could in principle contain more good than in fact it will if it is created does not provide a reason not to create it.⁹ Even if causing a fetus to exist condemns it to a tragically premature death, it does not follow that causing it to exist is bad for it.

If conditions (1) and (2) are satisfied, then it is permissible for the woman to allow the fetus to die. One cannot infer from this, however, that it is also permissible to kill it. And Kamm assumes that abortion involves killing. She believes, however, that the considerations advanced in condition (3), together with the nature and magnitude of the sacrifice required to aid the fetus, make killing permissible as well.

II. IS A SHORT LIFE BAD?

Having developed the cutoff abortion argument, Kamm then advances an objection to it. The objection depends on a rather obscure distinction between “experiential” and “formal” goods and evils—the former being goods or evils that are apparent from our present points of view within our lives, while the latter “are important to us when we consider our lives from

8. I discuss some of the other reasons in “Preferences, Death, and the Ethics of Killing,” in *Preferences*, ed. Christoph Fehige, Georg Meggle, and Ulla Wessels (Berlin and New York: de Gruyter, forthcoming).

9. These points are developed in more detail in *Killing at the Margins of Life*. Again, Kamm independently makes similar points on pp. 84–85.

the outside” (p. 129). Kamm appears to suggest that a life may be formally bad even if it is experientially good. Thus she explains the intuition that it is wrong to create a mildly retarded child rather than a normal child, not by claiming that it is worse impersonally to choose the less good of two possible lives, but by claiming that the retarded child meets “an objective standard of defectiveness,” a fact that makes it worse to create a retarded child even when the alternative is to create no child at all (p. 126). Since the life of a retarded child may appear good from within the life, Kamm’s claim seems to be that the life is formally bad. She then goes on to suggest that a very short life is also formally bad. Thus she claims that “we should not create persons at will unless we have good reason to believe that they can have some . . . number of years of life with some degree of health and welfare, and let us call these things that they should have the *minima*” (p. 132).

The assumption that a very brief life is bad threatens condition (2). For, if a brief life is bad, this undermines (3b) since, on this assumption, killing the fetus does harm it relative to its preconception prospects by condemning it to a life without minima, which is worse than no life at all. And, if (3b) is undermined, so is (2). For, if causing a fetus to exist is bad for it if it is later aborted, then the woman has a special moral reason to aid rather than abort it—namely, to prevent her having caused it to exist from harming it.

Is it true that a short life is bad? Let us put aside the distinction between experiential and formal values and distinguish instead between “welfare value,” which consists of happiness, broadly conceived, and “perfectionist value,” which consists of a variety of forms of excellence.¹⁰ The earlier argument that claimed that the loss of future goods through death cannot outweigh or negate the value of the goods a life contains was concerned exclusively with welfare value. The welfare value of a life or a part of a life is a function entirely of the intrinsic features of the life or part of a life and thus cannot be affected by relational considerations, such as the relation of one part of a life to another or the relation of a life or a part of a life to things or events outside of the life. Thus death cannot affect the welfare value of the life that has preceded it.

The perfectionist value of a life or a part of a life can, however, be affected by relational factors. Consider, for example, two possible endings of a life. In one ending, the person dies just as her intellectual powers begin to fail;

10. Here I follow Thomas Hurka, “Value and Population Size,” *Ethics* 93 (1983):505.

in the other, she lives for an additional year in a state of senile contentedness. Assume that the additional year would have positive welfare value. Whether it would have perfectionist value then depends on what has preceded it. Coming at the end of a life devoted to intellectual concerns, it might have negative perfectionist value, making the life as a whole worse than it would be without it.

In this case, while death might detract from the value of the life as a whole, it need not affect the value of the person's previous life. Yet, although she does not note this, what Kamm's argument requires is the claim that death can affect the perfectionist value of a person's previous life. Consider a life that lasts from t_1 to t_2 . If the interval is very short, then the life is bad. But, if one were to prevent the death at t_2 , so that the life would be lengthy, then the period from t_1 to t_2 would not be bad, since the life as a whole would not lack the minima. Thus whether or not death occurs at t_2 has a retroactive effect on the value of the period from t_1 to t_2 .

Although this is unorthodox, it is, I believe, reasonable to think that death can have a retroactive effect on the value of the life that precedes it.¹¹ The important question for Kamm, then, is whether prenatal death in fact has such an effect—in particular, whether it transforms a life with neutral or positive welfare value into one with a perfectionist value that is negative to a degree sufficient to make the overall value of the life negative as well. Let us make the assumption that is most favorable to Kamm: that life in utero normally has neutral welfare value. Why should a life that ends before birth be thought to have negative perfectionist value? Kamm in fact provides little support for the claim that a short life is bad other than the analogy with the life of a mildly retarded person. Brevity or truncatedness is, like retardation, held to be an objective defect that outweighs the welfare value of the life.

In order for a period of life to have negative perfectionist value, it must either be bad in relation to other parts of the same life (as in the case of the year of senile contentment), intrinsically bad, or bad in relation to events or things external to it. Since our concern is with the value of a short life as a whole, the first of these three grounds is inapplicable. Is a very short life, then, intrinsically bad in perfectionist terms? Is a short life, in itself, worse than no life at all? Assume that a life that ends six months after birth is too short to have the minima. Now consider an infant who leads a normal life

11. See my "Preferences, Death, and the Ethics of Killing."

with positive welfare value but dies unexpectedly at six months. I see no reason to suppose that such a life must be bad, demeaning, or unworthy of a human being. If one were to consult those with the strongest reasons for being concerned about the infant for its own sake—namely, its parents—it would be surprising if they were not glad, for the infant's sake, that it had existed, experienced life, and enriched their own lives. Naturally they would regret their own grief but it is unlikely that they would wish, for its own sake, that the infant had never existed.

This leaves the possibility that a short life has negative value because of its relation to the world external to it. Just as the year of senile contentment has negative perfectionist value because of its relation to the whole of which it is a part, so a short life might contribute negatively to the perfectionist value of the whole of which *it* is a part—the world, or the set of other lives. This judgment is best interpreted as a claim about the impersonal value of the life, and thus is compatible with the life having value for its possessor. It is analogous to the implication of Average Consequentialism that it is impersonally worse to create a life with a value below the average, even if the life has positive value for its possessor.

Again, however, I fail to see the force of this view. Creating a short life is surely impersonally worse, if other things are equal, than creating a longer life, just as causing a mildly retarded person to exist is worse when one could cause a normal person to exist instead. But, just as the view that the existence of a retarded person makes the world worse derives from an unappealing elitist conception of perfectionist value, so the claim that a short life makes the world worse derives from a curiously arbitrary and unintuitive conception. In any case, even if one were to grant that a short life makes the world worse, this would ground only a very weak objection to abortion, for it would remain true that the act that causes the fetus to need the woman's aid would not be worse for the fetus. Thus it could not be the case that the woman has a reason to aid the fetus in order to prevent what she has done from harming it. She would instead have an impersonal reason to aid the fetus in order to avoid having done what would otherwise make the world worse—not, I think, a compelling reason to forego an abortion.

III. THE DEPENDENT CHILD CASE

Although it seems groundless, let us provisionally accept Kamm's assumption that sufficient length is among the minima without which a life is bad.

With this assumption, of course, she grants the opponents of abortion a major concession. Her response is to develop an extension of the cutoff abortion argument that she calls the “benefit-burden approach” (p. 168). The core of this approach is a defense of the claim that condition (2) holds even if we grant that, in causing the fetus to need aid, the woman does what will be bad for it unless she aids it. Kamm notes that the cost of avoiding causing a fetus to exist is sexual abstinence during one’s childbearing years (“abstinence”), while the cost of aiding it is carrying it in one’s womb for nine months (“carriage”). She then contends that the cost of abstinence is too high to require a woman to abstain in order to avoid causing a fetus to exist. But, if she is not required to avoid the act that might cause a fetus to exist, then (provided she takes the precautions it is reasonable to require her to take, such as practicing contraception) she cannot be held liable to accept the high cost of carriage to aid the fetus on the ground that she has done the act. In short, the fact that abstinence cannot be required diminishes or negates her moral responsibility for the fact that the fetus requires her aid. Hence condition (2) applies.

In developing the benefit-burden approach, Kamm discusses the relevant considerations either in the abstract or with reference to the problem of abortion itself. If, however, we wish to grant the assumption that the fetus is a person, then focusing on the case of abortion itself allows an intuitive bias to operate; for, as our relative lack of concern about the high rate of spontaneous abortion shows, most of us do not find fetal death tragic in the way we do the death of a child or an adult and this may affect our intuitive assessment of abortion. If death is bad primarily because it deprives the victim of future goods, and if the fetus is a person for whom death is bad in the same way it is for other persons, then fetal death may actually be *worse*, other things being equal, than the death of a child or an adult, since the fetus normally loses a greater quantity of future life. We may, therefore, be biased in favor of the permissibility of abortion because of our tendency to think that the harm the fetus suffers in being aborted is less than it in fact is if the fetus is a person. To screen out this bias, we should test the plausibility of the benefit-burden approach by applying it to an analogous case in which an individual who is uncontroversially a person occupies a position corresponding to that of the fetus. As Kamm’s discussion demonstrates, however, the range of factors that are relevant to the morality of abortion is immense. Because of this, it is difficult to devise an analogy with sufficient realism to engage our intuitions that includes all

the relevant features of abortion without introducing further morally relevant features. The following example, which is analogous to a typical case of unwanted pregnancy and which I call the Dependent Child case, is the best I could concoct.

Suppose a woman has a condition that will cause any child she conceives to have a defect that manifests itself only during the child's third year of life and that is rapidly fatal unless the child becomes attached to the woman's body for nine months in order to receive life-supporting aid. For reasons of tissue compatibility, no one else's body will do: it has to be the mother. Suppose that, although the woman and her sexual partner conscientiously practice contraception, she becomes pregnant. In her society, abortion is not a possibility; however, a couple are found who are willing, even with the knowledge of the defect, to adopt the infant when it is born. Let us assume, in order to maintain parallelism, that, if the child is allowed to die, its life will have been too short to have had the minima. If it dies, therefore, its life will have been bad in formal or perfectionist terms and causing it to exist will also have been bad, either for the child or impersonally or both. I believe that most people, including many who believe abortion permissible, will find it difficult to believe that the woman has no special moral reason—no more reason than a stranger would have—to aid the child. The fact that it is a *child* who will die seems to make an intuitive difference.

There is an important difference between the Dependent Child (DC) case and abortion, which is that abortion, as usually practiced, involves killing whereas the failure to aid the child in the DC case involves letting it die. Since it normally takes more to justify killing than to justify letting die, if we find a special reason in the DC case to aid the child rather than let it die, then we should find an even stronger reason in a pregnancy that has arisen in the same way to aid the fetus rather than kill it. It would, of course, be desirable to eliminate the failure of analogy—e.g., by stipulating that the child in the DC case unavoidably becomes attached to the woman by means of some bizarre science-fiction effect, so that the woman must kill the child, perhaps in a way that involves mutilation (as in some abortions), in order to avoid the burden of aiding it. In that case, we would be even more strongly disposed to reject the permissibility of her refusing to aid it. It may help to think of the case in this way, though the diminution in realism may outweigh the enhanced fidelity of the analogy.

Is our intuitive response to the DC case affected when we consider the

central claim of the benefit-burden approach—namely, that the cost of abstinence is sufficiently high to relieve the woman of responsibility for the child's need for aid, thereby negating the special moral reason she would otherwise have to aid it? The benefit-burden approach challenges us to consider how the woman could acquire liability to accept the high cost of carriage on the ground that her action has caused the fetus to exist when she has done all that she could reasonably be required to do to avoid causing it to exist.

Reconsider the circumstances of the DC case. The woman and her sexual partner, who have practiced contraception but have not abstained, have caused the child to need the woman's aid in order to survive. As a result, either the woman or the child must suffer a great cost. The cost to the woman of providing aid is very great. But, since we may assume that (as in most actual cases of pregnancy) the male partner shares at least equal responsibility for the child's predicament, then, if there is a duty to aid the child, he must accept an equal share of the cost of providing the aid. Since he cannot do this directly, he must compensate the woman. If he fulfills his duty, this should diminish the overall costs to the woman by half. Moreover, even if she is not compensated, the cost to the woman of aiding the child is considerably less than the cost it will suffer if she fails to aid it. For the cost to the child is death—a death that is unusually bad both because the amount of good life it loses is unusually large and because the death retroactively makes the child's previous life bad, since it prevents the life from having the minima. Finally, the woman and her partner, knowing that they might create the child with its need for aid, nevertheless chose to engage in the behavior that in fact resulted in its needing her aid in order to have the benefits the behavior offered. Given these conditions, it seems plausible to suppose that the woman has a special reason to aid the child even if the act that caused its need for aid was morally permissible (because the cost of avoiding the act is too high to be required).

IV. RESPONSIBILITY FOR THE FETUS'S NEED FOR AID

One explanation of why the intuition that the woman has a special reason to aid the child may survive reflection on the benefit-burden approach is that the special reason to provide aid may be independent of any moral reason the woman may have had to avoid causing the child to exist. Earlier, I argued against the claim that a short life is bad. If I am right, then we can

agree that the woman in the DC case was not morally required to abstain from sexual intercourse. But our reason for agreeing is not that the cost of abstaining is too high to be required in order to prevent the dependent child from existing. Rather, there is simply no moral reason not to cause the child to exist. *A fortiori*, there would be no moral reason to abstain even if there were no cost to abstaining.

The reason there is no moral reason to avoid causing the child to exist, even if it will not receive life-supporting aid, is that its life is not bad, either for the child itself or impersonally, and may even be good, while its death, though certainly an evil, is not an evil that weighs against the goods of life. To see this, imagine a variant of the DC case in which the defect is incurable: the child's death at two is unavoidable. Assuming that any child the woman conceives will have the defect, that her child's life would be worth living in welfarist terms, and that the existence of the child would not be bad, on balance, for preexisting people, I believe that the woman has no moral reason not to conceive a child. For I can find no difference in principle between causing this child to exist and causing someone to exist who will inevitably die at fifty, or twenty, or ten—though presumably in these latter cases Kamm would hold that the life persists beyond the supposed minimum.

Many of us find that our intuition that the woman has a special moral reason to aid the child survives even if we accept that she had no moral reason not to cause it to exist and that her causing it to exist will not have been bad or worse for it even if she fails to aid it. If this is right, then the source of her special moral reason cannot be liability arising from her having done what she had moral reason not to do, nor can it be that she must provide aid to prevent the act that caused the need for aid from being an act of causing harm. What, then, is the source of the special reason? The weakness of the challenge posed by the DC case is of course that the special reason in the DC case may derive from a feature that is absent in the normal case of unintended pregnancy. If so, then the presence of a special reason in the DC case poses no challenge to the permissibility of abortion. And there are, of course, failures of analogy between the DC case and a normal unintended pregnancy. One we have noted: that refusing to provide aid in the former case involves letting die while in the latter it often involves killing. Another is that the woman in the DC case has already provided considerable aid to the child (by carrying it the full term of pregnancy) while a woman considering abortion has normally supported the

fetus only for a short time at relatively little cost. Both these differences, however, suggest that there is a *stronger* case for recognizing a special reason to provide aid in the case of unintended pregnancy than there is in the DC case.

Another possible difference that would morally differentiate the two cases is suggested by a brief passage in Kamm's book in which she appears to assume that the special duties of parenthood are voluntarily undertaken (p. 144). It might be argued that the woman's special reason to aid the child in the DC case derives from her commitments as a parent, whereas the pregnant woman has no such commitments, and hence no special reason, since she is not yet a parent. This, however, cannot be an adequate explanation of the woman's special reason since, if parental duties were voluntary, the woman would have renounced them by transference to the adoptive parents when the child was given over for adoption. So, if the special reason derives from a parental duty, it cannot be one that is voluntarily assumed. The DC case may indeed reinforce the view that some parental duties are nonvoluntary, at least in the sense that, if they cannot be transferred, they must be accepted.¹² So, for example, if the parents of a newborn infant cannot find anyone else (e.g., a person, a couple, or the state) willing to care for their child, then they must care for it. They cannot simply renounce parental duties by abandoning the child. The idea that the woman's special reason to aid the child is or derives from a parental duty is compatible with the idea that the reason derives from her responsibility for its need for aid. For certain parental duties may be based, wholly or in part, on the parents' responsibility for their offspring's need for aid. In that case, of course, if fetuses are persons, then they may be the objects of parental duties as well.

Suppose that we are unable to find a feature of the DC case that accounts for the woman's special reason and that is absent in the ordinary case of unwanted pregnancy. An alternative response to the challenge the DC case poses is to question our intuition that the woman has a special reason to aid the child. It might be argued that, if a short life is not bad, then the mere fact that the woman causes the child to exist provides no basis for the claim that she has a special reason to aid it. If she has done nothing that is

12. If it were possible for anyone to provide the aid that the child needs, then the adoption of the child by other persons would presumably release the biological parents from any duty to aid the child, since the special reason to aid it would be transferred along with all other parental rights and duties to the adoptive parents.

bad for the child and has transferred her parental duties to the adoptive parents, then she can have no more reason than a stranger would have to provide the aid it needs. Yet this conclusion is not only counterintuitive but also ignores the fact that cases involving causing people to exist can differ in surprising ways from cases involving a fixed population of preexisting people. For example, as Derek Parfit has shown, an act that causes a person to exist with a life worth living may be wrong even if it is not bad or worse for that person and is also not bad for anyone else.¹³ Suppose, for example, that one could cause either child C_1 or child C_2 to exist and that C_1 would be better off than C_2 . It might be wrong to cause C_2 to exist even if that would not be bad for him because his life would be worth living. If one chooses to cause someone to exist, one might even be morally required to accept a certain cost in order to cause C_1 rather than C_2 to exist. In the DC case, of course, there is no possibility of causing a different child to exist who would not have the defect (hence one possible ground for thinking it wrong to cause the child to exist does not apply). If it were possible to cause a normal child to exist, then the parents might be required to accept a certain cost to ensure that, if they were to cause a child to exist, it would be a normal child rather than one with the defect. If so, then surely they can also be required, in the DC case, to bear at least as great a cost to mitigate the bad effects of the defect. (Similarly, if one would be required to bear a certain cost in order to cause C_1 to exist rather than C_2 , then, if one were to cause C_2 to exist, one should have to bear at least as great a cost in order to make C_2 as well off as C_1 would have been.) The question is how great a cost they can be required to bear in either case.

How strong a special reason the woman has to aid the child, and thus how great a cost she may be morally required to bear, seems to depend on several factors. One is the proportion between the sacrifice that is needed and the bad effect that the sacrifice would prevent. In the DC case, the sacrifice required (carriage), though very great, is much less than the harm that the child will suffer if the sacrifice is not made. This is normally also true in the case of unintended pregnancy—assuming, of course, that it is implied by the idea that the fetus is a person that its death would be bad in the normal way. If, however, we consider a series of variants of the DC case in which the gap between the two costs is progressively narrowed (by increasing the cost to the mother of aiding the child), it becomes less and

13. Derek Parfit, *Reasons and Persons* (Oxford: Oxford University Press, 1984), part 4.

less clear that the sacrifice is morally required, until eventually it seems permissible for the woman to allow the child to die. If the DC case is relevantly analogous to unintended pregnancy, then even if the pregnant woman has a special reason to continue the pregnancy in normal cases, there may be no special reason if the cost to the woman of continuing the pregnancy is abnormally high.

Another factor that helps to determine how great a cost the woman should bear to aid the child is the extent of her responsibility for the child's need for aid, which in turn appears to be a function of the degree to which causing the need for aid was voluntary. If, for example, she and her partner deliberately conceived the child, her special reason would be stronger than it would be if the conception was unintended. If the conception was unintended, her special reason would be stronger if no effort had been made to prevent it than it would be if she and her partner had used contraception. If the conception was unavoidable—e.g., if it occurred as a result of rape—then we may feel that she has little or no special reason at all. These considerations, in fact, help us to see the force of the benefit-burden approach. For the voluntariness of an act is diminished, other things being equal, in proportion to the cost to the agent of avoiding it, and responsibility in turn diminishes with voluntariness. If abstinence is the cost of being certain to avoid causing the child to exist, this clearly diminishes the woman's responsibility for doing what causes the child to exist.

Intuitively, however, it does not diminish responsibility enough to make us believe that she has no special moral reason to aid the child. Why is this? Perhaps it is because the cost is primarily just the loss of the benefit that one gains by engaging in the act that causes the need for aid.¹⁴ The benefit is admittedly very great, for not only is sexual pleasure among the important goods of life, but sexual relations are an integral component of a type of personal relation that is, for most people, one of the fundamental elements in the good life. Yet in general we do not think that activities that are extremely beneficial to the agent verge on being involuntary just because the cost of not engaging in them—namely, forgoing the benefits that they provide—would be high. We are responsible for the consequences of even our greatest pleasures.

I have conceded that the central claim of the benefit-burden approach—

14. A similar point is suggested by Kamm in relation to what she calls the "refraining cost" on pp. 148–49.

that the cost to the agent of avoiding the act that causes a need for aid may affect the strength of the agent's reason to provide the aid—is correct. Yet another factor that also seems to affect the strength of the reason to provide aid is the likelihood that the act would cause a need for aid. If there is a high probability that any act of a certain sort will cause a need for aid, and if the cost of avoiding acts of that sort is also high, then one's responsibility for performing the act and one's consequent reason to provide aid to anyone thus caused to need it will be correspondingly diminished. If, however, the probability that any act of a certain sort will cause a need for aid is low, so that there is a good chance of avoiding causing a need for aid even if one does not abstain from the act, then considerations of cost seem to have less effect in diminishing responsibility. In these conditions, causing a need for aid seems less an inevitability that must be excused and more a piece of bad luck. If, for example, sex nearly always resulted in conception, regardless of the precautions taken, then the cost of abstinence would have greater force in diminishing responsibility for the fetus's need for aid than it does in actual conditions in which most women, if conscientious, are able to avoid both abstinence and conception.

We have yet to determine the source of the woman's special reason in the DC case. If it is not liability for wrongfully causing the child to exist, if it is not to prevent the act of causing the child to exist from harming it, and if it is not a voluntarily assumed parental duty, then what is the source? The earlier observation that the strength of the special reason varies with the degree of the woman's responsibility for the child's need for aid strongly suggests that it is primarily this responsibility itself that grounds the special reason to provide the aid. But is it really plausible to suppose that faultless responsibility for conditions in which a bad effect will occur can give rise to a special moral reason to prevent the bad effect, even at considerable cost to the agent, and even if, if the bad effect occurs, the act that caused the conditions will not have been worse for the victim? Kamm thinks not. In discussing the case of unintended pregnancy, she notes that not just anyone would be required to aid the fetus (assuming that were possible), even if the aid required a lesser sacrifice than carriage. Then she asks: "Has a woman who has conceived because of a blameless voluntary act thereby increased her responsibility to pay [a considerable cost] for the sake of the fetus? It seems not" (p. 161). A few lines down she repeats the same point, asking whether, if the fetus's need alone "is not a sufficient reason, . . . nonnegligently conceiving a fetus [could] increase a woman's moral responsibilities so that she became obligated to [incur a considerable

cost to save it]? I have suggested that it is reasonable to answer no” (p. 161). There seems to be no argument beyond these assertions. Of course, when stated in the abstract, the assertions seem plausible. For it is indeed odd to suppose that a person’s responsibility for causing a need for aid could ground a duty to provide the aid when not only was the person not culpable for the act that caused the need for aid but also there was no moral reason not to do the act. Yet this is precisely what consideration of the DC case suggests is true.

While responsibility for the child’s need for aid seems to be the primary source of the woman’s special reason, there may be other contributing factors—for example, the biological maternal relation. By itself this relation seems insufficient to generate a special moral reason. If, for example, the child had been conceived *in vitro* using the woman’s genetic material and then carried in a surrogate womb, all without her knowledge, it seems that she would have no more reason than a stranger to aid the child, though in one biological sense she would be its mother. But, while biological maternity seems irrelevant on its own, it may combine with responsibility for the child’s need for aid to create a stronger reason than responsibility alone would generate. This factor is, of course, also present in cases of unintended pregnancy.

It is important to notice that, insofar as one finds that the woman in the DC case has a special moral reason to aid the child, this casts doubt not only on the benefit-burden approach but on the cutoff abortion argument as well. For Kamm’s reason for thinking the cutoff argument inadequate is that the assumption that a short life is bad undermines condition (2). But the DC case elicits the intuition that the woman has a special moral reason to aid the child even if one rejects the view that a short life is bad. Hence the conditions of the cutoff argument are satisfied, *mutatis mutandis*, in the DC case; yet the argument’s conclusion that the woman may allow the child to die clashes with our intuitions. If the DC case is a proper analogue of unintended pregnancy that screens out the intuition that the fetus is not a person in the relevant sense, then it also challenges the conclusion of the cutoff argument in the case of abortion.

V. CONCLUSION

It is important to recall my initial disclaimer that the doubts I have registered about Kamm’s arguments should not be interpreted as a challenge to the permissibility of abortion. Several points should be stressed in order to avoid

rather than kill a fetus if she bears partial responsibility for its need for aid, it does not follow that this reason is legally enforceable. Even in the DC case, most people would think it wrong to compel the woman to aid her child by a threat of legal punishment. Thus nothing in my argument is incompatible with the view that abortion should be legally permitted at any stage.

Second, in virtually all cases of unintended pregnancy, the woman's sexual partner is at least equally responsible for the fact that the fetus needs her aid. If the woman has a special reason to provide aid, the male partner normally has at least as strong a reason. Since he cannot directly fulfill a duty to provide life support, he must fulfill his share of the responsibility indirectly by compensating the woman or by taking a correspondingly greater share of the burden of providing for the child after it is born. If, in particular, the woman were to be required by law to carry the fetus to term, her partner must be similarly required by law to do whatever is necessary to ensure that he shares the burdens of responsibility equally. There would, of course, be formidable legal problems in enforcing the male partner's duty to provide compensation—e.g., problems in determining paternity, determining how much compensation is due and what form it should take in particular cases, and so on. I will not pursue these problems here, but they are important if one believes that parents acquire a special moral reason to aid the fetus by creating its need for aid.

Finally, and most importantly, my argument that the woman has a special moral reason to aid the fetus is conditional on the assumption that the fetus is a person. If we can get ourselves to think of the fetus as if it really were the pregnant woman's *child*, then it should not be surprising if it strikes us that the pregnant woman's killing it or even allowing it to die is morally objectionable in a wide range of circumstances, even if it is very costly to her not to do so. Yet if we reject this assumption—and I think there are compelling arguments that show that we must—then the DC case is irrelevant to the morality of abortion and the presumption that stands in the way of abortion must, on any reckoning, be considerably weaker than Kamm assumes.¹⁵ And the considerations that Kamm advances seem sufficient not merely to defeat but to overwhelm that weaker presumption.

15. This seems true even if Dworkin is right that the fetus's life has intrinsic value *qua* human life. See Ronald Dworkin, "Unenumerated Rights: Whether and How *Roe* Should Be Overruled," *The University of Chicago Law Review* 59 (1992): 381–432.