Prenatal Drug Exposure: Ethical Issues

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Abstract

Increased understanding of how the well-being of the fetus is affected by prenatal behavior has focused attention on the ethical issues surrounding fetuses. In this article the sources of societal disapproval of drug-abusing, pregnant women are explored, and the relationship between our moral judgments and public policies is discussed. In examining the nature of a pregnant woman’s obligation to avoid harming a fetus she intends to bring to birth, ethical obligations are considered within the context of the complex moral web of parents’ and society’s responsibility for children’s health and welfare. Fundamentally, a pregnant woman’s moral obligation to her not-yet-born child is no more and no less than a parent’s obligation to a born child. Finally, ethical considerations can provide guidelines in formulating public policies directed towards drug-abusing, pregnant women that are effective, proportionate, and efficient.

There has been surprisingly little written on the ethical issues raised by drug abuse by pregnant women. This may be in part because the fetus was more an object of mystery than of knowledge until recent advances in diagnostic and imaging techniques allowed us to visualize the fetus and monitor its growth. Also, it has been only in recent years that we have a more complete understanding of the relationship between patterns of prenatal behavior and the ultimate well-being of the fetus. Finally, the minimal attention given to these ethical issues may be due in part to the polarized abortion debate, which has made civil discussion and honorable, sustainable compromise difficult when it comes to the fetus.

There is, however, increasing attention given to the ethical issues surrounding fetuses. Recently developed fetal therapies have led to a vigorous discussion of the ethics of compelling women to accept such treatments on behalf of their fetuses. Also, debate rages around the “fetal protection policies” adopted by a number of companies in the 1980s, which banned pregnant women (or in some instances “potentially pregnant,” that is, all nonsterilized women) from work environments thought to be hazardous to a fetus.¹

The idea of pregnant women abusing drugs and damaging the children those fetuses will become arouses a mixture of moral outrage...
and puzzlement over what to do about it. The outrage itself is suspect. There are many things pregnant women can do to harm a fetus besides using illegal drugs. Excessive drinking, smoking, taking certain prescription drugs, and failing to seek timely health care can all harm a fetus, yet we focus our anger on a particular group of women, mostly poor and powerless.\textsuperscript{2} We need to understand the sources of our moral disapproval of drug-abusing, pregnant women and to explore the connections between our moral judgments and our public policies.

At first blush, it may appear that debate over protecting the health of fetuses is inextricably tied to the debate over abortion. Can it possibly be more wrong to injure a fetus than to kill it? On closer examination, however, this paradox is more illusory than real. Much of this article will be devoted to examining the possibility, scope, and limits of a pregnant woman’s obligation to avoid harming a fetus she intends to bring to birth.

**Ethics and the Fetus**

The conflict over abortion may confound efforts to deal sensibly with other issues relating to fetuses. Certainly the differences between pro-life and pro-choice positions reflect a number of conflicts, including the role of women in society and the ways women may build meaningful lives.\textsuperscript{3} But the key dividing line in the abortion debate is the moral standing of fetuses. In the debate over pregnant women who use drugs, however, this dividing line is mostly irrelevant. The primary ethical concern is the well-being of the newborn—a concern which is not controversial and which all share. It is possible to set aside the abortion debate over the moral status of fetuses and concentrate instead on those fetuses that pregnant women have chosen not to abort—to bring to birth. We can recognize a woman’s interest in being allowed to choose whether or not to carry forward a pregnancy and still scrutinize those cases where women risk the health of a fetus they intend to carry to term.

A child born with an impairment caused by something that happened to it prior to birth is every bit as harmed as a child whose injury occurred after birth. Viability, which plays an important role in the abortion debate and is seen by some as a critical factor in determining the moral status of fetuses, is irrelevant to the discussion of nonlethal harm to fetuses who will be born and become persons. The key element is that the harm was done to a being who will become a person. That person suffers the consequences of the harm initiated when it was a fetus or blas-

tocyst, or even an ovum or sperm. It does not matter when one believes personhood begins, as long as the individual survives to that point, after which all would agree that it is a person. It is ethically inconsistent to say that it was wrong to do harm to a child, but it would have been alright to injure the same being when it was in the womb.

For illustration purposes, imagine a terrorist who plants a bomb in a nursery school, confidently expecting it to explode when there are a dozen 3-year-olds in the room, maiming them all. He sets the timer for 1 hour. This is a heinous act, intentionally causing grave harm to 12 young children. Would it make a difference if the terrorist set the bomb to go off in 24 hours or a week? Or, would it differ if he had planted the bomb years in advance, even before the children were born or conceived? As long as his intentions were the same and his expectations equally plausible, his action is just as wrong. The timing of an act that injures a person is not important in our moral evaluation of that act. Harm to a fetus that results in harm to a born child can be just as immoral as harm to the born child. Our evaluation of each act depends on the same, commonly understood criteria of moral judgment.

**Ethical Considerations and the Law**

Although we cannot directly translate law into ethics or ethics into law, developments in the law often reflect ethical considerations. This may well be true of the remarkable reversal in U.S. law when suits were allowed on behalf of injured fetuses
Prenatal Drug Exposure: Ethical Issues

subsequently born alive. W. L. Prosser, author of the standard work on tort law, described the recognition of a cause of action for prenatal injury as “the most spectacular, abrupt reversal of a well-settled rule in the whole history of the law of torts.” Prosser argued that previous denials of such claims were unreasonable. He also contended that viability was irrelevant to such claims. “Certainly the infant may be no less injured; and all logic is in favor of ignoring the stage at which it occurs.” Prosser acknowledged that proving a causal connection between some event early in pregnancy and an injury appearing later can be very difficult, but noted, “This, however, goes to proof rather than principle; and if, as is undoubtedly the case, there are injuries as to which reliable medical proof is possible, it makes no sense to deny recovery on any such arbitrary basis.”

Accepting the concept of moral obligations to fetuses who are intended to be brought to birth has important consequences. Perhaps most importantly, it allows us to place those obligations in the context of a complex web of moral relationships and legitimate moral considerations.

Ethical Obligations in Context

There are several barriers to thinking clearly about ethical issues concerning drug-abusing, pregnant women. For one, most of the discussion has focused on women who use illegal drugs, particularly “crack” cocaine. People who use illegal drugs are not regarded with much sympathy. Public intolerance of such drug use is currently very high. Discussion has also tended to focus on drug use by women at the bottom of the social ladder, women who are poor and often from racial minorities. Such women are very different from the people typically conducting the debate about what ought to be done, who tend to be predominantly male, White, and at least middle-class.

An additional barrier is our propensity to sentimentalize the relationship between a pregnant woman and her child-to-be. Rather than viewing a woman who is pregnant as having one more relationship with moral import to add to the others she already has, we tend to treat a pregnant woman as if the fact that she is pregnant is the only morally important thing about her. Her pregnancy becomes a trump card, overwhelming all other moral considerations.

Moral Responsibility for Children: A Complex Web

Most of us have morally significant relationships with many people, not just our children. Our moral obligations to our children may be particularly broad and deep, but they do not overwhelm all other moral considerations in all circumstances.

There are many ways in which fetuses can be endangered, and many parties other than the woman carrying them who can influence their long-term well-being. Even if we look only at drugs, there are many drugs that harm fetuses other than crack and its illegal brethren. Alcohol can devastate a developing child; some prescription drugs can also have a severe impact. Cigarette smoking has been shown to reduce birth weight. Environmental and occupational hazards can damage the fetus, as can any number of events outside the pregnant woman’s control, such as automobile accidents, assaults, and illness. Our public health policies and our health care system also have direct impact on many fetuses who will become children. Our patchwork system of health care, which results in many women not getting adequate prenatal care, may cause more damage to more children than any illegal drug. We all have a moral responsibility to

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avoid harming developing children and to do what is reasonably within our power to ensure their healthy development.

Men also have moral obligations to their children and to their not-yet-born children. What a man eats or drinks may not go directly to the not-yet-born child his spouse is carrying, but there are many ways his actions may affect that being’s long-term welfare. If drinking or taking drugs leads him to become violent or encourages the pregnant woman to use the same, he bears moral culpability for his actions. A father-to-be can be equally or more at fault for not insuring that the not-yet-born child
gets adequate prenatal care by refusing to pay for it or by other such behaviors.

Once we conquer our tendency to see the relationship between a pregnant woman and her not-yet-born child as *sui generis*, we can place it in the context of our actual, complex moral lives. Except for the occasional hermit, we live with a multitude of moral relationships—spouses, children, parents, friends, other relations, coworkers, neighbors—the list can grow quite long. When we make a decision to work late, to spend time with our children rather than with our friends, we are making decisions that have inescapable ethical dimensions. Our choice may require balancing obligations to our employer against obligations to our family or the interest of one family member against another. We are clearly entitled to consider our own interests in making such decisions as well. Good, moral decision-making acknowledges the multiplicity of relationships and moral commitments in our lives and weighs all of the important and relevant considerations.

**Parents’ Moral Obligations to Their Children**

As parents, our moral obligations to our children are serious and often demanding, but they are not absolute. They do not require us to give up all other duties and interests. We have a duty, for example, to protect our children against harm, but this obviously does not require a parent to sterilize all surfaces in the house and force all visitors to wear masks, lest a normal child be made sick by a virus or bacteria. Such efforts would be enormously expensive as well as counterproductive, because they would deprive the child of the opportunity to build up immunities to common infectious organisms. In addition, we would not require parents to take such arduous and extreme measures to protect their children against such a remote likelihood of serious harm. When the probability of grave harm becomes very high, as in the case of children with one of the rare, inherited immune deficiencies, such as SCID (Severe Combined Immune Deficiency), then it is reasonable to ask parents to do much more than usual. We expect parents to take only reasonable precautions.

Is it ever morally acceptable to place a child at risk in order to benefit another person? Imagine the following situation. A snowstorm has hit your city and your mother calls. The electricity to her house has been cut off by the storm; it is dark and cold, and she is frightened. She asks you to please come get her. You are home alone except for your 3-month-old baby. You bundle the child up, strap her into an infant seat, and set off through the snow to your mother’s house. The roads are slippery; at times the snow makes it difficult to see more than a few feet ahead. You know that there is a small but genuine risk that you might be in an accident or stranded in a drift and that you and your baby might be exposed to the severe cold, or worse. Have you done something morally wrong? As long as the other’s need was serious and the risk to the baby not disproportionate, the decision to rescue mother from the cold and fear is morally justified.

**Moral Obligations of Pregnant Women**

Pregnant women who intend to have the child they carry have moral obligations to that not-yet-born child. But those obligations do not absolutely dominate pregnant women’s moral lives any more than obligations to born children absolutely dominate their parents’ lives. The “geography” of pregnancy—the fact that the not-yet-born child is physically within the woman and affected by what she does or by what is done to her—means that the scope of actions potentially affecting the fetus is broad. But that is a difference in number, not in kind. Fundamentally, a pregnant
woman’s moral obligations to her not-yet-born child are comparable to a parent’s obligations to a born child.

**Equivalent Moral Obligations of Fathers**

A pregnant woman who intends to have a child has obligations to take reasonable measures to ensure that the child she will bear is not injured while still a fetus. But those obligations cannot have a greater moral force than a father’s obligations to his born child. This moral equivalency leads to a rough test to see if our moral judgments, as well as the policies we are considering, are sensible or are the product of a sentimental view of the relationship between a pregnant woman and her not-yet-born child. Essentially the test requires us to find whenever possible a situation involving a father and his child that is similar in its moral dimensions to the problematic situation faced by a pregnant woman and her not-yet-born child. The moral considerations typically include the burdens on the parent (or parent-to-be) and the benefits to the child (or not-yet-born child) as well as effects on others, promises made, and the standard panoply of morally relevant circumstances. By constructing analogies between pregnant women and not-yet-born children on the one hand, and fathers and born children on the other, we can test our initial judgments about the acceptability of particular moral judgments and an assortment of possible public policies.

**Ethics and Drug Use During Pregnancy**

To the extent that prenatal drug abuse poses a danger to not-yet-born children, that the risk is significant and the harm substantial, then prenatal drug abuse is a serious violation of the ethical duty not to harm one’s not-yet-born child. To the extent that another party, for example the child’s father, contributes to the presence of drugs in the pregnant woman’s system, that person is likewise ethically responsible for the harm done to the not-yet-born child.

While this may seem obvious, not all writers on related issues seem comfortable with such a conclusion. Dawn Johnsen, in a thoughtful and forceful attack on the concept of fetal rights, says, “We may accept as a general proposition that a pregnant woman has a moral obligation to her future child. But it does not follow that we should, or even that we can, determine in any particular case that a woman has some-how violated that obligation.”\(^5\) Admittedly there will be cases where judging another’s moral culpability will be difficult. But this is true for every moral judgment, not only judgments about pregnant women’s actions. Unless we are willing to accept a general moral agnosticism—that we can never know whether others are fulfilling their moral duties—then we must accept that moral judgments can be made, even as we must be careful not to make them hastily or in ignorance.

**Mitigating Factors**

For women who use drugs while pregnant, there may be several mitigating factors, such as hopelessness, lack of knowledge about the damage drugs can do to a developing fetus, and loss of control over their actions. But precisely these same reasons can be cited as mitigation for other ethical failures. To the extent that drug users have alternatives, understand the risks posed to others, and retain the capacity to choose, they must shoulder the moral responsibility for their actions.

**Fundamentally, a pregnant woman's moral obligations to her not-yet-born child are comparable to a parent's obligations to a born child.**

Advocates for not interfering with the decisions of pregnant women stress several points. For one, they point out that a pregnant woman who acts in a way that endangers her fetus might be a victim as much as a villain. That appears to have been true of Pamela Rae Stewart, who was charged with failing to obtain proper medical care, resulting in the death of her fetus, and with using amphetamines. The charges were later dismissed.\(^5\) Coercive actions are more likely to be taken against women who are poor, powerless, and culturally distant from those who exercise power, including physicians.\(^6\) Treating the pregnant woman and fetus as separate entities requires favoring one over the other, so that “[f]avoring the fetus radically devalues the pregnant woman, treating her like an inert incubator, or a culture medium for the fetus.”\(^7\)

**The Limits of Moral Obligations**

One scholar, troubled by the implications of ascribing to and enforcing moral obligations on pregnant women, lists the sorts
of things for which they might be held liable: “... failing to eat properly, using prescription, non-prescription and illegal drugs, smoking, drinking alcohol, exposing herself to infectious disease or to workplace hazards, engaging in immoderate exercise or sexual intercourse, residing at high altitudes for prolonged periods, or using a general anesthetic or drugs to induce rapid labor during delivery.”

The concept of moral obligations to the not-yet-born should not be used unjustly or oppressively or for the subjugation of women who are poor or socially isolated. Pregnant women should not be treated as if they were nothing more than fetal vessels.

Placing the moral decisions that pregnant women reach in the broader context of the decisions all of us must make and employing the analogy with fathers and born children enables us to see that pregnant women do not surrender their moral autonomy simply because they are pregnant. It is a moral error to exaggerate one moral relationship over all other moral considerations. Pregnant women act in a morally responsible manner when they weigh all relevant considerations, including their own interests, in choosing a course of action.

Accepting the concept that drug-abusing women may be violating their moral obligations to their not-yet-born children does not, however, tell us which public policies directed towards drug-abusing pregnant women are discussed below.

**Ethics and Public Policy**

There are many things people do that are ethically wrong. Only in limited circumstances, though, do we attempt by the power of the state to force people to do what is ethically right. It is wrong to break a promise, and the state does enforce contracts. But the state leaves the great variety of other broken promises alone. When it comes to how we raise children, some parents imbue their children with racist or totalitarian political beliefs. Although most of us believe this is ethically wrong, the state does not interfere with parents’ freedom to teach their children whatever political, social, and religious beliefs they wish.

We also give parents wide latitude in deciding what risks their children will be exposed to. Some parents will not allow their sons to play football. Others give cigarettes to their children as birthday presents. Parents can take their child hang gliding or mountain climbing, but in most states it is against the law to let a young child ride in the car without a special safety seat.

However, at some point, disciplinary beatings cross the ill-defined line to child abuse, and the state steps in. Our laws against child abuse are intended primarily to protect the child and only secondarily to punish adults who have harmed the child. When necessary, we can remove children from the settings which endanger them. We do not have that option with the not-yet-born child. Its “setting” is firmly attached until birth. The moral cost of protecting not-yet-born children can be grave, interfering, perhaps grossly, with the autonomy of pregnant women.

**Moral Criteria Used to Evaluate Public Policy**

Public policies should be evaluated by several criteria. They should be effective; that is, they should achieve at least in good part what they set out to accomplish. They should be proportionate; that is, the costs, including the moral costs of the policy should not exceed the benefits the policy provides. They should be efficient; that is, there should be no other policy that would have a greater proportion of benefits to costs.
What policies are likely to be effective, proportionate, and efficient for minimizing the damage done to not-yet-born children by drug abuse by pregnant women? Some believe that the danger justifies coercion. One scholar advocates “criminal sanctions and even compelled enrollment in rehabilitation programs for the benefit of the fetus.” This writer cites the cost of care for drug-damaged children and the interest in protecting potential life as justifications for his recommendations. The Committee on Ethics of the American College of Obstetrics and Gynecology encourages communication with the pregnant woman and the use of ethics committees for persistent disagreements. But they balk at going to court. In contrast, the American Academy of Pediatrics Committee on Bioethics is willing to go further under certain circumstances. They too recommend conversation, and, if need be, an ethics committee, but they acknowledge that a physician may persist if “(1) there is substantial likelihood that the fetus will suffer irrevocable harm without the intervention, (2) the intervention is clearly appropriate and will likely be efficacious, and (3) the risk to the woman is low . . . in rare cases, recourse to the courts might be considered.”

Neither committee explicitly addressed the issue of drug abuse. But it seems reasonable to assume that ACOG’s reluctance to force treatment on pregnant women would extend to forced drug rehabilitation. Because the AAP leaves the door open to legal intervention, their position is more difficult to project.

Public Policy and Acceptable Moral Costs

Scholars who have written about potential conflicts between pregnant women and their not-yet-born children have generally dismissed the more coercive public policies, such as incarceration or punishment, in favor of inducements. Nelson and Miliken advocate “increasing the availability and quality of voluntary prenatal care for all pregnant woman and the availability of drug and alcohol rehabilitation programs and other social services . . .” The carrot is preferred over the stick for two reasons. First, the costs, moral and otherwise, of coercive policies are argued to be unacceptable. These costs include restrictions on the freedom of women that would never be accepted if they were proposed for men. Second, they argue that coercive measures would not be effective in preventing harm to not-yet-born children. The prospect of institutionalization or other coercive treatment would be likely to deter women from admitting their drug abuse if they sought prenatal care, or to keep them from getting such care at all. The net effect would be more harm to children, more of whom would be born prematurely or with other problems that timely prenatal care could have averted. The latter argument is an empirical prediction: overall, more harm than good would come to the children themselves.

The argument about unacceptable moral costs is a moral argument. We can test it with the analogy to fathers and children. First the ethical test: Would we judge that a father was morally wrong if he engaged in drug abuse in such a way that it posed some risk to the long-term health of his children? I believe the answer is resoundingly Yes. Now, the public policy test: Would we forcibly institutionalize him, not as punishment for harm caused (remember we have only the risk of harm so far) but to lessen the chance of harm? Would we make that our public policy if we suspected that it would mean we would uncover fewer such cases because the fathers would not themselves go for treatment or bring their children in for care? I think we would reject such a policy as ineffective and disproportionate. Aggressive education and accessible, effective drug rehabilitation should be made available to people at risk.

I can imagine an unusual set of circumstances in which it would not be unethical to do the kind of careful, balancing analysis the American Academy of Pediatrics recommends, even to the point of proposing some intervention, against the wishes of the pregnant woman. But, as the Academy suggests, the harm must be judged as being fairly certain and irrevocable, the measure taken, as being highly effective, and the imposition on the woman (“risk” with its medical connotation does not seem appropriate here), modest. Even in

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The moral cost of protecting not-yet-born children, interfering, perhaps grossly, with the autonomy of pregnant women, can be grave.
such a case, if we have not provided ample opportunity for women to get the health care they need, including prenatal care and drug rehabilitation if necessary, then we have not lived up to our own moral responsibility to provide decent and accessible care for those in need.

Conclusion

Nancy Rhoden, a most insightful ethicist and legal scholar, wrote about the complexities of pregnancy, law, and ethics:

In any individual case, the immediacy of the potentially tragic consequences will be enormously compelling. It will be extremely hard for judges to refrain from overriding refusals in order to prevent these consequences. But on a broader societal scale, preventing these tragedies comes at the cost of embracing an unprecedented and problematic tyranny of medicine and technology, and a tyranny whose potential scope knows no bounds. I, for one, believe it is better for our society to choose the occasional tragedy and for judges to stay out of the delivery room.13

References: