

Charles Wolfram suggests a different justification for a limited duty to represent even disreputable clients. Just as the butcher may be under an obligation to give a piece of meat to someone who is starving, the lawyer is sometimes under an obligation to represent "a necessitous client who has a compelling need for legal services . . ." The underlying duty here is "a fundamental moral duty to rescue," qualified by considerations of "the capacities of the lawyer, the risk that may be incurred by the lawyer or caused to others, and the nature of the client's legal needs." This duty to rescue extends to the rescue of morally disreputable clients if "the client's claim is legally just, the client's claim is a socially important and morally compelling one, and the need of the client for this particular lawyer's services are truly pressing."

On Wolfram's view, the duty to represent does not arise for minor legal matters, but only to vindicate some legal right to an essential human need. Thus, some lawyer might have an obligation to defend an innocent Nazi erroneously accused of a serious crime. But for Wolfram, a Nazi's right to march through Skokie is not an urgent enough legal matter to generate an obligation to represent Nazi clients, at least not on grounds of *rescue*.

The Last Lawyer in Town

The "last lawyer in town" may be obligated to represent immoral clients if refusing means that human dignity will go unrespected or urgent legal needs unmet. But what about everyone else? Do the arguments for a duty to represent mean only that *some* lawyer will have to accept an unsavory case, or that *no* lawyer can justifiably refuse?

Held suggests that, while everyone may be entitled to counsel, not everyone is entitled to the *best* counsel.

First-rate lawyers may—and, on Held's view, should—pick their cases with care, while mediocre lawyers, and all lawyers sharing the burden of representing unpopular clients, will occasionally get stuck representing clients with unjust or immoral ends. Likewise, Donagan's argument from human dignity does not seem to imply that every lawyer has an obligation to take every case, but that lawyers should be on guard that their private judgments do not conspire to leave any claims unrepresented. Wolfram specifies that his duty of rescue does not apply if many other lawyers are available and willing to handle the necessitous client's case.

It does seem, however, that if the last lawyer in town is *obligated* to represent a disreputable client, it is at least *permissible* for other lawyers to do so as well. It does not seem necessary to have in hand a certificate of unanimous refusal before accepting a morally problematic case.

Lawyers, like everyone else, are morally accountable for their actions, both private and professional. They are morally accountable for representing disreputable clients and morally accountable for refusing. In the absence of clear instructions from the professional code, it is left up to the individual lawyer to weigh his obligations to promote justice, to respect human dignity, and to preserve his own moral integrity. Each lawyer must face the hard question: will he be known for the company he keeps, or for the company he turns away?

The views of Virginia Held, Charles Wolfram, and Alan Donagan are taken from drafts of papers prepared for an ongoing research project on lawyers' ethics, conducted by the Center for Philosophy and Public Policy and the University of Maryland School of Law. For information about working papers available from this project, see p. 15.

Making Fathers Pay

In any examination of the profile of American poverty, one fact is especially striking. The overwhelming majority of children receiving welfare in this country do so because they are denied the support of their fathers. The absence of fathers from the home is the principal cause of AFDC (Aid to Families with Dependent Children) dependency, accounting for 85 percent of AFDC cases (widowhood, once the chief concern of the AFDC program, now accounts for 4 percent of cases). More than one out of six children are currently living apart from their fathers, and more than one third of those children live in poverty.

The proportion of absent fathers who fail to support their children is astonishingly high. Only one quarter of AFDC mothers have child support orders, and in about 80 percent of all cases mothers with support orders experience delinquency in payments owed. Roughly 40 percent of all divorced, separated, and single women never receive *any* support from the fathers of their children.

One might think that in the case of AFDC children much paternal negligence can be explained by poverty—if a poor father just hasn't got any money he can hardly mail off a monthly support check to his kids. It

is not true, however, that most of the fathers defaulting have low incomes: 60 percent of fathers with earnings below \$5000 pay nothing; 50 percent with income between \$5000 and \$10,000 pay nothing; and 52 percent with more than \$10,000 pay nothing. Fathers' records in providing payments do not seem to be much affected by their total earnings or by the ratio of support payments to those earnings.

Barbara Bergmann, Professor of Economics at the University of Maryland, has pieced together this cheerless picture of support for the families of "fatherless" children:

- The mother's own earnings account for roughly 50 percent.
- The contributions of other family members account for 15 to 20 percent.
- Welfare payments from the government make up roughly 30 percent.
- Payments from the children's father may make up 5 to 10 percent.

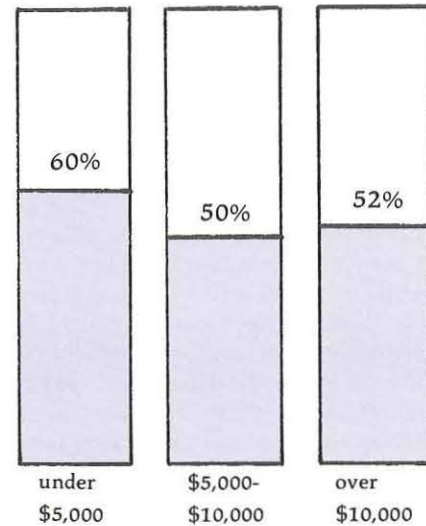
Bergmann estimates that the total monetary contribution which fathers make to children living apart from them averages only 2 to 5 percent of absent fathers' income.

Why Fathers Don't Pay

This pattern of delinquency and neglect raises some obvious and troubling questions. Why *don't* absent fathers pay toward the support of their children and why doesn't somebody *make* them pay?

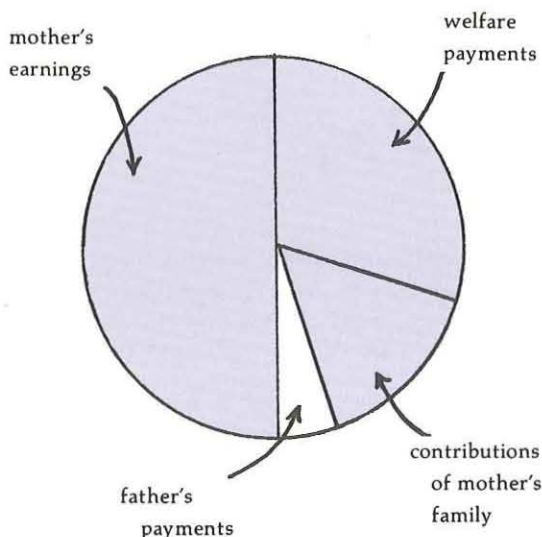
The principal reason explaining the statistics lies in the shortcomings of the legal system. Bergmann explains that there is most often no official govern-

DEFAULTING FATHERS, BY INCOME



Data relating to 1973 from the Michigan Panel Study of Income, analyzed by Jones, Gordon, and Sawhill

SUPPORT OF "FATHERLESS" CHILDREN



Data analyzed by Barbara Bergmann

mental effort put forward to enforce paternal child support. Even where "a divorced father has been ordered by a court to make payments for the support of his children, the court in most jurisdictions sets in motion no governmental mechanism that sends him bills, notes his payments and delinquencies, and moves against him if he is delinquent." It is the mother's own responsibility to initiate expensive legal proceedings to collect payments owed. "The process is so cumbersome," Bergmann concludes, "that obedience to support orders can almost be said to be voluntary." Most fathers, apparently, do not volunteer to pay.

Cases of illegitimacy pose still more sensitive problems. Although biological paternity testing is increasingly accurate (90 percent of non-fathers can now be excluded on the basis of blood tests), an identity problem of some magnitude remains. Furthermore, many mothers are reluctant to name candidates for paternity testing, or refuse to have any connections with the father. A man who can be shown to have fathered a child out of wedlock can be ordered to contribute to its support. But few mothers pursue this often painful and difficult option to a satisfactory conclusion.

Should Fathers Be Made to Pay?

There is little disagreement, one would hope, about the underlying principle of parental obligation: *both* parents have a duty to support their children to the best of their ability. While in practice our society seems to tolerate fathers' shirking this obligation, it seems clear to most that it is indeed an *obligation* they are *shirking*. The more difficult questions concern the moral legitimacy of invoking the power of the state to

enforce this obligation, and the desirability and feasibility of enforcement.

In *On Liberty*, John Stuart Mill wrote that to bring a child into the world without providing for its support "is a moral crime, both against the unfortunate offspring and against society; and if the parent does not fulfill this obligation, the State ought to see it fulfilled at the charge, so far as possible, of the parent." Mill commented sarcastically on the reluctance of his fellow countrymen to enforce paternal duties: "while this is unanimously declared to be the father's duty, scarcely anybody, in this country, will bear to hear of obliging him to perform it."

Though Mill was an ardent champion of liberty in his century, in ours his suggestion may seem to countenance excessive powers of intrusion on the part of the state. In our society, we decline to exact fulfillment of financial obligations in ways that interfere with personal liberty. Baruch Brody, Chairman of the Philosophy Department at Rice University, comments: "If I have voluntarily incurred a great many debts, society allows me to go bankrupt to clear them up. No one suggests that I be compelled to work for a period of time to satisfy those debts. If I sign a contract under which I voluntarily accept certain obligations, our law rarely requires that I actually fulfill those accepted obligations. . . . Why am I not compelled to do what I have agreed to do? A standard answer is that our social value-scheme places a high value upon human freedom."

The absent father's right to liberty, however, is certainly not absolute. Weighed against it must be the extreme deprivation his children may suffer, and the costs to society of supporting a tragically increasing number of paternally abandoned children. All children, it would seem, have a right to a decent share of food, shelter, health care, and education, a right which the state, in one form or another, must see respected and upheld. Martha H. Phillips, former Assistant Minority Counsel of the House Committee on Ways and Means, points out that "if illegitimate children and female-headed households become the predominant situation, as seems to be the case in several cities, our institutions will have to find alternatives or break under the weight of excessive responsibilities. It can be argued that we must return to enforcement of individual obligations if we are not willing to pay for public support of a large percentage of our children." In this context, a father's "right" to a life unencumbered by the consequences of his past choices and commitments cannot weigh decisively.

A second problem concerns the practical desirability of enforcing fathers' obligations. Phillips cites two arguments against enforcement. The first is that AFDC children themselves may be made actually worse off in the process. "It is argued that AFDC children will not only fail to receive increased support from vigorous enforcement, but that they will end up with less total income than before. Welfare benefits are reduced dollar by dollar by child support pay-

ments, leaving the same total income. But in many low-income communities, fathers provide occasional help, gifts, and emergency financial assistance which, not being reported, supplement rather than supplant the mother's welfare payment." Strict sanctions against delinquent fathers might encourage denial of paternity, thus depriving children both of additional financial assistance and of participation in a wider kin network. Second, enforcement of a father's obligations to his former family may drive his current family into poverty and onto the public relief rolls.

Few would defend the abstract justice of enforcement if it succeeds only in further victimizing poor children. Here more information is needed to assess the practical strength of these arguments. Certainly paternal assistance does not at present make a very significant contribution to welfare families. And even if enforcement makes no net positive contribution to child support, it would still seem fair to reduce the tax burden placed on parents who do meet their own familial obligations.

The final question addresses the feasibility of enforcement. Since 1975 the federal government has provided funds to support state efforts to establish paternity, locate fathers, and secure their payments to mothers receiving AFDC (and, on a voluntary basis, to non-AFDC mothers). Under Title IV-D of the Social Security Act, the Child Support Enforcement Program, \$365 million was spent in fiscal 1979 to collect \$1.3 billion. HEW reports that in fiscal 1978, paternity was established by the courts for 110,700 children; 1,142,000 parents were located; 315,700 support obligations were established; and the AFDC caseload dropped to its lowest level since August 1971. Phillips concludes, "This program has been both politically and substantively successful in increasing paternal child support payments." Another alternative, suggested by Bergmann, would be a mechanism for withholding support payments from fathers' paychecks, administered by the Internal Revenue Service and/or the Social Security Administration. Or a special tax could be imposed on absent fathers to provide support generally for all "fatherless" children.

Conclusions

In an era of budget cuts and retrenchments in social programs, governmental enforcement of paternal obligations seems increasingly desirable, from both a moral and practical point of view. Mothers have long enough been left with an unfairly heavy and lonely burden of child care and economic support. The time may have come for a greater number of fathers to shoulder their share.

The views of Barbara Bergmann, Baruch Brody, and Martha H. Phillips have been drawn from their contributions to *Income Support: Conceptual and Policy Issues*, edited by Peter G. Brown, Conrad Johnson, and Paul Vernier (Totowa, N.J.: Rowman and Littlefield, 1981). All statistics are taken from this book. To order, see p. 15.

Workshops and Briefings

In order to convene individuals from different backgrounds with a common interest in philosophy and public policy, the Center sponsors workshops and briefings for academics, policymakers, and others concerned with the philosophical implications of current policy choices. Three different kinds of programs are offered for the first half of 1982.

Third Thursday Briefings

February 18, 1982 • Robert Fullinwider
"Two Cheers for Quotas: The Moral Grounds of Affirmative Action"

Response: Charles Cooper, Special Assistant for Law and Policy, Division of Civil Rights

March 18, 1982 • Douglas MacLean
"Economic Approaches to Regulation: Suggestions for Applying Executive Order 12291"

Response: David Bodde, Assistant Director, Congressional Budget Office

April 15, 1982 • Henry Shue
"Human Rights: Is the Current U.S. Conception Too Narrow?"

Response: to be announced

Third Thursday Briefings, by Center research staff, will be held in Room 457 of the Russell Senate Office Building in Washington, D.C., from 4:15 to 6:00 p.m. These briefings are open to the public, free of charge.

Liberalism: Does It Mean Anything Today?

A three-day workshop on the political theory of liberalism will be held at the metropolitan-Washington-area campus of the University of Maryland, April 1-3. U.S. Sen. Paul Tsongas, Ronald Dworkin, Marshall Cohen, Christopher Lasch, Theda Skocpol, and other speakers from across the political spectrum will address questions raised by recent shifts in political allegiances. The conference will begin Thursday evening and conclude Saturday afternoon. The conference fee is \$75.00. Accommodations for Thursday and Friday nights are available in limited numbers at the University's Adult Education Center (single—\$34.13/night; double—\$42.00/night). Other accommodations at higher prices are available nearby. See information and registration form, facing page.

Teaching Philosophy and Public Policy

A three-day workshop on the teaching of philosophy and public policy will be held in Washington at Trinity College June 23-25. Daniel Callahan, Director of the Hastings Center, will be keynote speaker. Center staff with extensive experience in teaching a wide range of policy-oriented philosophical courses will conduct seminars and discussions on the moral and conceptual controversies generated by such issues as conscription, workplace safety, energy policy, and the environment. Emphasis will be placed on strategies for effective teaching about the underlying philosophical issues. The conference fee is \$75.00, not including room and board. See information and registration form, facing page.

AVAILABLE PUBLICATIONS

The following publications can be ordered from the Center for Philosophy and Public Policy. See order form, facing page.

Working Papers on Energy Policy

EP-1 "Contractarian Theory, Intergenerational Justice, and Energy Policy" by David A. J. Richards

EP-2 "Energy Policy and the Further Future" by Derek Parfit

EP-3 "Intergenerational Justice in Energy Policy" by Brian Barry

EP-4 "Conflicting Views on a Neutrality Criterion for Radioactive Waste Management" by David L. Bodde and Thomas B. Cochran with an introduction by Douglas MacLean

Working Papers on Legal Ethics

LE-1 "The Adversary System Excuse" by David Luban

LE-2 "The Moral Failure of Clinical Legal Education" by Robert Condlin

A complete bibliography of Center working papers is available upon request. The charge for working papers is \$2.50 per copy.

Food Policy: The Responsibility of the United States in the Life and Death Choices, edited by Peter G. Brown and Henry Shue (New York: The Free Press, 1977—\$14.95; paper, 1979—\$8.95).

Human Rights and U.S. Foreign Policy: Principles and Applications, edited by Peter G. Brown and Douglas MacLean (Lexington, Mass.: Lexington Books, 1979—\$16.95; paper, 1980—\$10.95).

Basic Rights: Subsistence, Affluence, and U.S. Foreign Policy, by Henry Shue (Princeton, N.J.: Princeton University Press, 1980—\$17.50; paper, 1980—\$4.95).

The Reverse Discrimination Controversy: A Moral and Legal Analysis, by Robert K. Fullinwider (Totowa, N.J.: Rowman and Littlefield, 1980—\$22.50; paper, 1980—\$9.95).

Income Support: Conceptual and Policy Issues, edited by Peter G. Brown, Conrad Johnson and Paul Vernier (Totowa, N.J.: Rowman and Littlefield, 1981—\$27.50).

Boundaries: National Autonomy and Its Limits, edited by Peter G. Brown and Henry Shue (Totowa, N.J.: Rowman and Littlefield, 1981—\$22.50; paper, 1981—\$9.95).

Workshop Information and Registration Form

I would like further information on: _____ Liberalism: Does It Mean Anything Today?
 _____ Teaching Philosophy and Public Policy

I would like to register to attend: _____ Liberalism: Does It Mean Anything Today?
 April 1-3, 1982

_____ Teaching Philosophy and Public Policy
 June 23-25, 1982

Name _____

Deposit: \$35.00 per conference

Title _____

Balance of registration fee due first day of
 conference

Address _____

Please make your check payable to University of
 Maryland Foundation.

Phone _____

Specific information on housing for each con-
 ference will be mailed to registrants.

Mail to: Workshops
 Center for Philosophy and Public Policy
 University of Maryland
 College Park, MD 20742

For phone information, contact Elizabeth Cahoon, (301) 454-6604.

Order Card

Quantity	Title	Price
All orders must be prepaid (checks payable to Univ. of Md. Foundation).		Subtotal
Postage and handling (books only) \$1.50		
TOTAL		

NAME _____

ADDRESS _____

CITY _____ STATE _____ ZIP _____

Return this form to: Center for Philosophy and Public Policy

Room 0123 Woods Hall

University of Maryland

College Park, Maryland 20742