

Chapter 2

THE OBLIGATION OF THE STATE TOWARD INDIVIDUALS

This chapter examines some of the very sensitive questions about the obligation of the state toward individuals within it, particularly the very weak and deprived sectors of society. With regard to these sectors there is always the fear of either overprotecting their rights on the one hand, or of arbitrary, invasive, and even offensive treatment by the state, on the other. The state, per the *Parens Patriae*¹ doctrine is supposed to guarantee not only the freedoms and negative rights of its residents, but also their positive rights. However, occasionally it appears that the desire to fulfill this duty and protect certain rights and freedom of a particular individual, may cause harm or violate some other rights. This chapter will deal with certain issues where the proper extent of the state's obligations (if there are any) is not very clear, and will try to suggest limits and restrictions to this obligation. The specific cases to be examined are those of fetuses, minors, and mentally retarded people: three vulnerable sectors in society. In each case the examined rights will be different, but they illustrate the complexity of the general question about the general obligation of the state toward individuals within it—particularly the weak and the vulnerable. At times the principle obligation of the state is to provide its residents with certain capabilities and skills, but there are instances where this obligation requires the state simply to abstain (ensuring that others will abstain as well) from any interference with one's liberty, and to respect the individual's freedom.

¹ *Parens Patriae* is the doctrine whereby the state takes jurisdiction over a minor living within its border. Usually it is the basis for deciding what state will assume jurisdiction in a child custody case, but it also used for ascribing responsibility and accountability on the state toward children within its borders.

CASE 1

The first case concerns a decision made by the Bristol County (Massachusetts) Juvenile Court Judge, Kenneth P. Nasif in 2000, to send to jail a 32-year-old woman, Rebecca Corneau, who was pregnant at that time. His intention was to incarcerate her in prison until the birth of the baby, then take the baby into custody and release its mother.

Mrs Corneau was a member of a cult from Attleboro, Massachusetts which does not believe in or cooperate with modern medicine. A year earlier she had given birth to a stillborn baby, and the police suspected that any competent physician present at the birth would probably have been able to save the baby. Since two other babies from that cult had died during medically unaided delivery, the Judge thought it is his duty to protect the Corneau's future baby as well as other children from that cult. Hence he denied custody to the Corneau family and to two other families of the same cult, and appointed guardians to their existing children. Bristol County District Attorney, Paul F. Walsh, said that though he had doubts about the legal grounds for the decision to arrest the woman, he felt confident on its moral grounds.

My purpose here is to examine the decision to arrest Mrs Corneau in order to protect the fetus. I do not want to enter too deeply into the question of custody, but to use this example for discussing the alleged obligation toward fetuses. I know that there are many difficulties even with the question about the parental competence of Mr and Mrs Corneau, but at this point I content myself with citing Edgar Page's position, which says that "we must remember that parental rights are those rights which people have simply *as* parents, not as *good* parents."²

The legal question here, which is marginal to my discussion, raises the question about the appropriateness of the Judge's decision. When even the District Attorney said that he had hesitations about the legal grounds for a decision that supported his side, the Judge had to rule against the DA, even if only due to doubts or insufficient evidence, since he did not have certain and unquestionable legal grounds for a decision against Mrs Corneau. However, what is more interesting and important here is the question of why the District Attorney was so confident about the moral and ethical grounds for that decision. With regard to this question we can inquire into three main issues.

The first relates to a situation where one's freedom is violated not only without committing an offense, but without even being suspected of committing one (Mrs Corneau's husband was incarcerated for 138 days for not reporting what happened in the previous birth). One can interpret the situation as the incarceration of an innocent person, and therefore cannot be justified. The freedom against arbitrary

² Page Edgar. "Parental Rights," In: Almond Brenda and Hill Donald (eds.), *Applied Philosophy: Moral and Metaphysics in Contemporary Debate*. Routledge, London and New York, 1991, p. 75. The emphasis in the original.