

THE NEED FOR GREATER CHILD-SUPPORT LAWS
AN ETHICAL ANALYSIS OF FAMILY VALUES IN MUSLIM COUNTRIES

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Introduction

Over the run of an ethics course, students are introduced to methods of analysis via philosophy, theology, law, and polity. Indeed, the reason we have many different avenues of analyzing ethical issues is due to the inherent difficulty that the questions present. What is clear, however, is that there is no “one size fits all” type of answer to an ethical dilemma, regardless of what Han Fei might have believed. It is at this juncture where the absolutist and situationalist views of ethics part ways. In the absolutist view, there are systems of laws that have been handed down by some entity (God, the emperor, the Polity, etc.) that must be obeyed. Breaking the law leads to punishment and adhering to the law leads to reward. In the situationalist view, we move away from this overarching dichotomy, and introduce “shades of grey” wherein the actual situation dictates the decision, rather than the absolute nature of the act itself. However, what is common between the two schools are that there is an underlying system of laws that helps guide our decision. Keeping both of these schools in clear view, we can then begin to analyze the ethical dilemma posed in this paper, and using the various techniques prescribed by philosophy, theology, and law, we can test to see if an answer does indeed exist. Naturally, we do not expect a clear result in this analysis, but we hope to show a result that is clearer than when we first start. Thus, the structure of the rest of the paper will be as follows. We will first formulate the ethical dilemma, providing the background and the situation that follows. Next, we will define the system of laws that exist in theology and philosophy that attempt to address this dilemma. Using these laws, then, we would conduct our analysis by weighing the evidence for both sides of the argument and then conclude with our decision. It is important to note that the latter half of this paper takes on a “trial” format used in our courts. This is no coincidence, however, because we

feel that only by providing both sides of the argument can one begin to feel that one has arrived on a decision acceptable to both sides (much in the style prescribed by Holmes¹).

Defining the Case

The particular dilemma that we are trying to address, deals with the treatment of Parents by their children. Once parents reach a certain age (where they are no longer able to take care of themselves) what are the duties of their children? In many parts of the world, a joint-family system exists especially when the idea of retirement pay and savings is not prominent. In such societies, it is the duty of the working adults to take care of both their children and their parents. This is the way it has been for many generations, and continues to this day. In these societies, regardless of formal civil law, the moral path is that since our parents take care of us in our young age, we should reciprocate by taking care of them when they are no longer able to do so. So far, there is no inherent ethical dilemma, but what if the situation was a little bit different?

Thus, we refine the situation as follows: we hold that it is indeed one's duty to reciprocate the care provided by a parent when one is young. We can even hold that as a universal maxim, in that if a parent has taken care of their children properly, it is ethically right for the child to provide care for their parents, once said parents become unable to do so themselves. However, now we may have a situation of one of the parents (in this case, the father) that abandons the family when the child is very young. Now, in the United States, the court provides protection from this via child-support laws. In many Muslim nations however, these laws exist, but are not enforced. Furthermore, until recently divorce was not a common occurrence in Muslim societies either, so the woman's family may not even pursue the father for child-support, even though they may have every right to. Thus, we have a child who has known

¹ See Holmes: pg. 3

of (but hardly met) his father throughout his childhood, has not received any financial support, and thus has been solely raised by his mother. Now, once this child has grown and become able, and his parents reach the age where they are unable to take care of themselves, does this child have a duty towards his father? If so, to what extent does he owe him his support? If he indeed does support his biological father, he also knows that he may indirectly be hurting his mother (since she would not want him to be in touch with his biological father). Thus, an interesting side note is to consider whether his mother is acting ethically by asking him not to intervene if his biological father requires his help. Furthermore, is it ethical to refuse help solely on the grounds that he may hurt his other parent?

To make this case salient, we formulate two questions that the rest of this paper will address. First, is it ethical to refuse help to a parent on the grounds that they did not support the child during his early years? Second, is it ethical to refuse help to one parent at the behest of the other? The following sections will outline the underlying laws for each question, and then we can begin the analysis of the ethical arguments put forward by various philosophers. Both the situationalist and absolutist philosophies will be considered in order to provide a balanced analysis.

Theological Arguments

Since we have formulated this case under an Islamic setting, it would be prudent to first identify the Islamic laws that speak about parents rights. The Koran (holy book of the Muslims) states:

And We have commended unto man kindness toward parents.²

Thy Lord hath decreed, that ye worship none save Him, and (that ye show) kindness to parents. If one of them or both of them attain old age with thee, say not "Fie" unto them

² Pickthall: pg. 358

*nor repulse them, but speak unto them a gracious word. And lower unto them the wing of submission through mercy, and say: My Lord! Have mercy on them both as they did care for me when I was little.*³

*Mothers shall suckle their children for two whole years; (that is) for those who wish to complete the suckling. The duty of feeding and clothing nursing mothers in a seemly manner is upon the father of the child. No-one should be charged beyond his capacity. A mother should not be made to suffer because of her child, nor should he to whom the child is born (be made to suffer) because of his child. And on the (father's) heir is incumbent the like of that (which was incumbent on the father). If they desire to wean the child by mutual consent and (after) consultation, it is no sin for them; and if ye wish to give your children out to nurse, it is no sin for you, provide that ye pay what is due from you in kindness. Observe your duty to Allah, and know that Allah is Seer of what ye do.*⁴

In the Koran itself, there is little guidance that speaks to our particular ethical dilemma. Overall, the Koran makes it clear that one is to honor and respect one's parents. Interestingly, the Koran does explicitly state the justification of taking care of parent's lies in reciprocity. Since they took care of their children, the duty of the children is to take care of them. Further light is shed on this topic by analyzing the sayings of the holy prophet Muhammad (PBUH):

The Prophet said thrice, "Should I inform you out the greatest of the great sins?" They said, "Yes, O Allah's Apostle!" He said, "To join others in worship with Allah and to be undutiful to one's parents." The Prophet then sat up after he had been reclining (on a

³ Pickthall: pg. 201

⁴ Pickthall: pg. 46

pillow) and said, "And I warn you against giving a false witness, and he kept on saying that warning till we thought he would not stop".⁵

A man came to Allah's Apostle and said, "O Allah's Apostle! Who is more entitled to be treated with the best companionship by me?" The Prophet said, "Your mother." The man said, "Who is next?" The Prophet said, "Your mother." The man further said, "Who is next?" The Prophet said, "Your mother." The man asked for the fourth time, "Who is next?" The Prophet said, "Your father."⁶

From these writings, we can infer few points because the often-contradictory natures of theological texts need a greater analysis than we have attempted here. The overall gist (in our view) is that it is the duty of every Muslim to obey their parents in every way (except that where they contradict with the worship of God). Furthermore, the first statement from the Prophet shows that the being undutiful to one's parents is one of the worst sins committable. However, the second statement clearly shows that in times of conflict one should side with the mother above the father.

In Islam, the Koran and the Hadith (sayings of the holy prophet) are the basis upon which all Shariah (holy) law is formulated. Based on the texts and in the absolutist tradition, the duty of the child is clear. If the biological father asks for help in the time of need, then it is necessary for the child to provide help. However, in the context of the mother asking the child to rebuke the father, it is necessary for the child to accept the demands of the mother over the demands of the father. The third cited verse in the Koran illustrates the duties of both mother and father towards the child after the divorce. The father is responsible to provide monetary support in the rearing of

⁵ Khan: pg. 551

⁶ Khan: pg. 952

the child under all circumstances. Under the situationalist view, things become a little difficult to decipher. This particular situation is that of an extremely hostile divorce with the child being caught in the middle of the disagreement. We reserve further analysis in the situational context for the next two sections.

It is important to justify the arguments of the Koran and the Hadith at this point in the paper. We are not assuming these laws as a given, but rather we need to analyze the inference behind the laws themselves. Much of theological tradition is absolutist, simply because it is heralded as the word of “God” and questioning it is tantamount to blasphemy. This is perhaps more true of Islam than any other religion (though there is considerable disagreement). The first thing to point out is that the concept of the rights of the parents vis-à-vis their children is based within the concept of reciprocity. Since a parent raises a child, caring for it through its period of helplessness, it lays down a duty of the child to reciprocate in kind during a period when the parent is helpless. Similarly, the ethical basis for the father to provide for the child (even if there is a divorce) is also sound, in that the father is partially responsible for bringing the child into the world, and thus his duty is to provide for the child during the period when the child cannot provide for itself. Indeed, both these arguments would satisfy Kant’s criteria for the universal maxim, since these are laws that every rational being should be able to reason to and conclude that they should apply to everyone. Furthermore, this is also consistent with what we would expect were we in the other position, i.e. a parent would expect their child to take care of them when they cannot, and a child would like to be taken care of when it cannot provide for itself.

Where the theological argument becomes difficult is in the insistence of it holding a mother to a higher position than the father. It may well be argued that a mother goes through a lot more difficulties when birthing and raising a child; the pain of childbirth, the necessary nurturing

during the early years, the emotional responsibilities, the teaching of the child during the early years, etc. However, this can hardly be said to be true in all cases. Barring the pain of childbirth, a mother does not always fulfill the extra responsibility during the early years of a child. Furthermore, we do not believe this is a rule that can apply to all cases, and based on reason, cannot argue in favor of this becoming a universal maxim. The final point to consider, however, is that all religious institutions emphasize the importance of the family unit as the core of the faith (barring belief in God, of course).

Philosophical Arguments

While the texts studied in the course do not directly relate to the question at hand, we can perhaps reformulate a more general set of questions to be answered in this section. The first question can be thought of in the following way: is it ethical to help someone that has harmed you or harmed another? This follows if you assume that by not providing for a child during the early years of development, one is hurting the child. The second question is formulated as follows: is it ethical to ask another person to harm a third party? We will study these two questions by following the arguments of Confucius, Han Fei, Protagoras, Aquinas, Mill, and Kant. Using the answers from this section, we will analyze our original ethical dilemma in the next section of the paper.

Turning to Confucius, who belongs to the situational view of ethics, the main thrust of his argument was reciprocity, “what you do not want done to yourself, do not do to others.”⁷ Furthermore, he differentiated between the superior and inferior man by outlining the concept of duty, in that the superior man will always follow his reason and so his duty, whereas the inferior man is instinctual and serves only to further his own purpose. He states, “Recompense injury

⁷ Confucius: Analects pg. 1

with justice, and recompense kindness with kindness.”⁸ What these recommendations imply is that first, one must treat others, as they themselves would wish to be treated, which would ensure that a person would treat others as equals and would not endeavor to hurt anyone else. Second, a rational person should apply his/her reason to figure out the correct path to take, and then take it, rather than act on instinct. This would ensure that a person does not act in a selfish manner, but rather, looks to the good of all, as opposed to the good of the individual. Third, if a person does indeed hurt someone, this person should be brought to justice to ensure that the hurtful behavior is curbed. Therefore, individuals are provided with a disincentive towards bad action and an incentive towards good action. Using this basis of ethical reasoning, we can speak to how Confucius would answer the two questions posed earlier. Clearly, it is unethical to help someone that has harmed you or someone else⁹. This person must be brought to justice (i.e. punished) to ensure that the harmful behavior is not repeated. Furthermore, if one is to help a harmful person, the disincentive would be countered, and might prompt further individuals to harm others. As far as the second question is concerned, we do not believe Confucius would see any difference between harming a person directly or indirectly (via a third party). Therefore, such behavior would not be the action of the superior man, deriving from the same logic of reciprocity.

Next, we turn to Han Fei, which is decidedly more difficult to conclude. Han Fei belonged to the absolutist/legalist tradition, and he believed in following the law (as it had been prescribed). In following Han Fei’s argument, we would have to define the laws that underlie this particular scenario. At the time of his writing, the ruler made the laws and we would have to assume that any action that harmed others would be severely punished (as stated in his writings). Thus, there is no question of helping someone that has harmed others, clearly if one has done so,

⁸ Confucius: Analects pg. 1

⁹ In this particular context, help is synonymous with reward. This follows because help can also be understood as mercy, which would have a slightly different connotation.

he would be subject to chastisement, and not worthy of any help. In regards to the second question formulated above, asking another person to harm a third party would again be tantamount to harming someone yourself, which would go against the law of the emperor (since it would destabilize his rule), so it would be ethically wrong (and worthy of punishment) if someone asked another to bring harm upon a third party. Of course, this rests upon the will of the emperor, but as Han Fei says, “Therefore, the intelligent sovereign makes the law select men and makes no arbitrary promotion himself. He makes the law measure merits and makes no arbitrary regulation himself.”¹⁰ What this implies is that even though an emperor formulates policy, if he seeks a stable rule, he cannot make any exceptions, and if the emperor states that harming someone is wrong (which he presumably would have to in order to protect against anarchy), thus there can be no question that both the actions above are ethically wrong.

Turning back to the situationalist tradition, we have Protagoras, who argued that virtue could be acquired and taught, and is in the purview of any human being that can reason. Protagoras alluded to five virtues that one may be able to acquire: wisdom, temperance, justice, piety and courage. He states, “Reasonable punishment is not vengeance for a past wrong...but is undertaken to deter the wrongdoer and whoever sees him being punished from repeating the crime.”¹¹ What this means is that the punishment should not be excessive, but should be strong enough to set a precedent, keeping in mind future generations and their actions. Therefore, helping a person, that has previously hurt someone, would be considered a reward for the action, allowing further individuals to deem this behavior acceptable. According to Protagoras, temperance is shown by not hurting the person in kind, but punishing him enough so that he (and any other person) does not commit a similar action. Thus, it is not ethically right to help this

¹⁰ Han Fei: pg. 1

¹¹ Plato: pg. 324b-c

person. As far as the second question is concerned, asking someone to hurt a third party is not ethically right either, since we are committing the wrong in that case.

Since we are conducting our analysis using theological arguments, it is only fitting that we speak about Aquinas. He belongs to the absolutist tradition as well, and fits under this scenario quite well. Aquinas believed in the word of God, which formed the basis of all ethical and moral bases (as outlined in the theological section). Thus, he would follow a strict interpretation of the laws put forth in the Koran and Hadith, and so his interpretation would be identical to the absolutist view put forth in the preceding section.

On the other hand, Mill's argument would be different and worth noting. For him, maximizing happiness (utility) was ethically right. Of course, in his view the nobles defined what gave people happiness since they were the best judges of that particular emotion (having experienced the most of it). Looking from this purview, everything becomes gray because the laws are defined by the upper class. Assuming that the ethical questions we are trying to answer belonged to someone in the upper class, the answer would be yes, it would be ethically right to help someone who had harmed others, as long as it made us happy (that we were able to derive some utility). For the second question too, the answer is the same. Therefore, it is naturally instinctual for us to pursue our own happiness (provided we belong to the upper class). In the event that we do not belong to the upper echelons of society, we would have to look for answers from our superiors (in his view). Thus, if one may put themselves in the shoes of the 18th century cream of society, one could argue that helping someone that had harmed another would be ethically right if the person being helped was one of the upper class, or if the person that had been harmed did not belong to the upper class. Furthermore, it may also be ethically right to ask another person to harm a third party as long as the other belonged to the upper class, and felt that

this action would yield the greatest utility for society. If this conclusion is murky, that is because of the conditions placed by Mill upon the analysis. Clearly, it does not provide a satisfactory answer, but it is one that considers the two questions and finds that they may be ethically right.

Finally, turning to Kant, the most powerful notion he has is that of the universal maxim (categorical imperative). According to this, one should only act in accordance to one's duty. Duty, then, is given by an action that one can reason to that will apply universally, and is therefore objective. That is, it is free from the desires of the individual, and is in congruence with the desires of society. The "subjective maxim" relates to the individuals own wants and desires, whilst the "objective maxim" is applicable to all rational human beings. Thus, if asked to help, the individual may take pity on the person that has wronged him, and may want to help him, but (according to Kant) this outcome cannot apply universally. Hence, it is this individual's duty to bring his wrongdoer to justice rather than to assist him. In regards to the second question, asking someone to do something wrong on your behalf is still wrong, and certainly cannot be considered a universal maxim. Furthermore, it is treating people like a means to an end, rather than an end in themselves. Clearly, this is ethically wrong as well.

Applying the Arguments

In this section, we will apply the above reasoning by the various philosophers to the actual situation at hand. In this way, we hope to discover what the course of action is ethically right, and for what reasons. To recap, the overarching questions that we are trying to answer are:

- i. Is it ethical to refuse help to a parent on the grounds that they did not support the child during his early years?
- ii. Is it ethical to refuse help to one parent at the behest of the other?

According to the arguments laid down by Confucius, Protagoras, and Kant, a father that abandoned his child and then returned to ask the child for help during his (parent's) time of need must surely be rejected. In order to see how this follows, we define the ethical guidelines that are laid down by the three, namely: reciprocity, precedent, and the universal maxim. It is our stance that it would be ethically right to refuse help to the father. First, reciprocity is not present in this scenario, since the father did not provide for the child, it is not necessary for the child to provide help to the father. Second, by refusing to help the child, the father did not perform his duty. Rather, he followed his instinct and did not reason that his family would need some form of sustenance to lighten their burden. Since he reneged on his duty, by helping him the child would actually be rewarding the father for this type of behavior¹². This should not be allowed because it would show that the abandonment of family by the patriarch is acceptable. The father would be able to return and obtain help whenever he saw fit. Thus, by rewarding such behavior (or, more appropriately, failing to punish such behavior), one would create an incentive for further individuals to walk out on their families, since they could accrue benefits whilst forgoing the costs. Hence, while refusing help is not vengeance per se, providing help is not apt punishment. Finally, we can see that Kant's universal maxim cannot apply in this case, since helping the father is not reciprocation, and we cannot say that we are performing a "good will" from providing help to the father. This is because the duty borne to us is to punish harmful action (the act of abandonment was a subjective maxim that has negative consequences on society). Therefore, the universally accepted moral principle would be to punish the father, which would entail refusal of any help requested.

¹² While the word "reward" may be a bit strong, it is still not penalizing the father for his conduct, which may be akin to a reward.

Concerning issue (ii), a mother influencing a child to refuse help to the father would depend on the outcome of issue (i). To see how this argument follows, we will turn once again to reciprocity, precedent, and the universal maxim. If the first issue is found to be ethically right, then the mother influencing the child to perform his/her duty is ethically right, since providing direction to children is one of the tenets of parenthood. Thus, the universal maxim and reciprocity are satisfied because if one were trying to guide another towards their duty, then they would expect everyone to reason that influencing others to perform their duty in any given scenario is ethical (i.e. it would be an objective maxim). Where this issue becomes difficult is in the matter of precedent. This is because only is one can reason that if issue (i) were ethical, then influence in the same direction would also be ethical. If issue (i) were unethical, then the only reason for the influence would be a subjective maxim (i.e. revenge), which would be unethical. Thus, this illustrates the importance of Kant's "maxim of an act". If the principle behind the act is driven by duty, then it is ethical, otherwise, it is not.

In contrast to the situationalist view, we have the absolutists: Han Fei, Aquinas, and Mill¹³. The important point that binds the three philosophers (and really, the absolutists in general) is that the laws are passed down from some source and are applicable in all circumstances. For Aquinas, the "authority" was the church, for Mill-the wealthy, and for Han Fei-the emperor. These were the origins of morality, and thus their laws were to be obeyed. The concept of "duty", then, was fulfilled by observance to these laws. Starting with Aquinas and using Islam as the basis for his argument, he would state that the Lord's word was passed down in the Koran and the Hadith, and should be followed as such, as it is the basis of morality. Hence, Aquinas would prescribe that regardless of what the father did, it is still the duty of the child to

¹³ For the sake of conciseness, we will be utilizing Aquinas to simultaneously present the theological view. Based on his arguments for the church, we would consider his views to be on par in this context.

provide help if requested. Thus, Aquinas would suggest that it would be unethical not to provide assistance for the father. For Han Fei, the emperor established the rules, but the underlying assumption was that the emperor's rule was fair. Given Han Fei's strict beliefs in chastisement and commendation (where chastisement translates to "death and torture" by Han Fei's own admonition), we would not even reach the point of the question itself. Since the father failed in his duty to provide for the child, he must be punished severely, and thus he would not be in a position to request assistance from the child. While it is difficult to establish what the emperor would have ruled in this particular scenario, one would imagine the law being applicable to all, and thus chastisement would be prescribed for the father (in the first place) for not fulfilling his duty towards his child, which would then render issue (i) as moot. Finally, for Mill, the issue would be how much utility this would provide. If we assume the elites to be ambivalent to our case, we would expect the utility provided by taking care of the old to outweigh the utility provided by abandoning the young. This reasoning is based on the idea that young children may not be able to perceive their needs; old people, however, are better able to perceive their own needs. Therefore, the loss of utility to a child is less than the loss of utility for the elderly (assuming ages when both groups are unable to provide for themselves). Thus, according to Mill, it would be ethically wrong to refuse help to a parent on the grounds of the child not receiving support during his/her formative years.

Considering issue (ii) from the view of the absolutists, Aquinas would argue that the Hadith clearly states the superior control the mother enjoys over the child¹⁴ (as compared to the father). Thus, if the parent requesting help is indeed the father, and the mother requests the child not to intervene, then it is the duty of the child to adhere to the mother's wishes. Hence, it is ethical to refuse help to one parent at the behest of the other, only if it is the father requesting

¹⁴ See the Theological section for this argument.

assistance. In our particular case, issue (ii) is indeed ethically right. For Han Fei, the law is absolute and makes no distinction between mother and father. Thus, based on this equality, we could suggest that issue (ii) would be ethically wrong, since it would be worthy of punishment to hold one parent's wishes above the other. The reasoning follows directly from the recommendation made by Han Fei to the emperor, suggesting, "[T]he intelligent sovereign makes the law select men and makes no arbitrary promotion himself"¹⁵, alluding to equality between the mother and father. Finally, the argument from Mill in regards to issue (ii) would really depend on whether the child derived a higher utility from obedience to one parent, or from helping the other parent. We could provide a prediction here, that the child would be expected to derive a higher level of utility from obeying the parent that has raised him/her as opposed to the parent that was unsupportive. Accordingly, Mill would view it as ethically right provided the parent requesting help was the one that abandoned the child earlier.

Conclusion

Table 1 in the appendix provides a summary of the recommendations made by the various philosophers on each issue. Weighing the arguments, we find that it is ethical to refuse a parent of help if they had abandoned their child at an early age. Furthermore, we find that it is ethical to refuse help to the abandoning parent at the behest of the supporting parent. However, the supporting parent's wish should only be granted based on the intent (maxim) of their recommendation. If the recommendation intends to extract revenge rather than suggesting duty, then the recommendation would be deemed unethical. The basis for arriving at this particular conclusion is as follows. We find that helping a parent that had earlier abandoned their child would set a dangerous precedent for future parents. Abandonment by a parent is an action that

¹⁵ Han Fei: pg. 1

should be punished. As yet unforeseen circumstances may prove that the abandonment was unavoidable, in which case the analysis should be reconsidered in light of new evidence. As the case stands, however, the punishment for abandonment stands, and would be no greater than the refusal of help if such a request came forward. We find that we agree with the situationalist school in this regard. Furthermore, from what we can infer from the religious texts, we find that theological arguments are based on reciprocity, though there is no direct solution to the ethical dilemma posed in this paper. Insofar as the issue of the supporting parent requesting the child to be unsupportive of the abandoning parent, we find that greater evidence of intent is required to give a concrete decision as far as the morality of the recommendation is concerned. However, regardless of the stance taken on issue (ii), the main thrust of the paper was to address issue (i). It is also prudent to mention that before undertaking this analysis, we were not able to ascertain an issue in regards to legal precedent, but after this paper, it is clear that this is the most important reason for the decision. We also find that this analysis lends an insight into the importance of child-support legislation, especially in Islamic nations wherein, while the laws may exist, they require renewed enforcement such that the dilemma posed by this paper would become outdated. Children deserve a future, regardless of the needs of their parents. We hope that this analysis may shed some light on this glaring issue.

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Appendix I

		Issue (i)	Issue (ii)
		Is it ethical to refuse help to a parent on the grounds that they did not support the child during his early years?	Is it ethical to refuse help to one parent at the behest of the other?
Situationalists	Confucius	Yes	Yes**
	Protagoras	Yes	Yes **
	Kant	Yes	Yes**
Absolutists	Aquinas	No	Yes
	Han Fei	Irrelevant	No
	Mill	No*	Yes*

Table 1: Taxonomy of Philosophical Analysis

* = Based on perceived utility

** = Based on precedent