

## Parenthood, *Patient as Person*, and Research with Children

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It is an odd feature of nontherapeutic medical research on children that so many people think it licit, yet struggle to articulate persuasive reasons for why it should be permitted. Despite some fifty years of efforts, Ariella Binik admits the “ethical justification for exposing children to risk in the absence of their informed consent remains unclear.”<sup>1</sup> This perplexity would presumably delight Paul Ramsey, whose (in)famous stance against any nontherapeutic research on children still overshadows contemporary discussions of the question. Despite the fact that Ramsey’s critique of such practices in *Patient as Person* generated a wide variety of rejoinders, in the early 1990s Ramsey still thought his arguments for a total prohibition on nontherapeutic research on children “ha[d] yet to be refuted.”<sup>2</sup>

Ramsey may have been so confident in his position at the end of his career because he thought it allowed more forms of research with children than his critics thought he could affirm. On the most common reading of *Patient as Person*, Ramsey argued research with children is impermissible if there are no *medical* benefits to the child. Such an approach would rule out practically any study in which healthy children might be needed to participate, including psychological studies. But Ramsey seems to have thought his emphasis lay elsewhere. His concern was to argue that research must *benefit that child*, rather than to stress that such benefits must be *medical*. In his critique of Ramsey’s position, William Bartholome observed that parents do more than protect children from harms—they also nurture in them a sense of moral responsibility. Participating in research with *this* end, Bartholome suggested, would be licit insofar as it offers a benefit to the child, even if not a therapeutic medical benefit *per se*. Somewhat surprisingly, Ramsey accepted this emendation as concordant with his own

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<sup>1</sup> Binik, Ariella. “Does Benefit Justify Research with Children?” *Bioethics* 32, no. 1 (January 2018): 27. Norman Fost concludes that a convincing justification for non-therapeutic research on children has “never been made,” and Thomas Murray admits the arguments for it are “notably weaker than the arguments favoring a complete ban”. See Fost, Norman. 2005. *Bioethics and American children: Report to the President’s Council on Bioethics*. Retrieved from <http://bioethics.georgetown.edu/pcbe/transcripts/dec05/session1.html> and Murray, Thomas H. *The Worth of a Child*. Berkeley: University of California Press, 1996, 74. Cited in Wendler, David. “A New Justification for Pediatric Research Without the Potential for Clinical Benefit.” *The American Journal of Bioethics* 12, no. 1 (January 2012): 23–31.

<sup>2</sup> Ramsey, Paul. “Response III.” In *Covenants of Life: Contemporary Medical Ethics in Light of the Thought of Paul Ramsey*, edited by Kenneth L. Vaux, Sara Anson Vaux, and Mark Stenberg, 199–234. *Philosophy and Medicine*, v. 77. Dordrecht ; Boston: Kluwer Academic Publishers, 2002, 211.

view, with the caveat that parents cannot use ‘moral education’ as a guise or cover to increase the risk of harm for their children.<sup>3</sup> At bottom, Ramsey was interested in establishing a firewall or bulwark against “using [an] uncompromising subject for a purpose alien to [children].”<sup>4</sup>

The distorted reading of Ramsey’s account can be traced both to the strength of Ramsey’s rhetoric in *Patient as Person*, and to the way the subsequent debate with McCormick unfolded. Their disagreement turned on a number of interrelated axes, including the relationships of love and justice, individuals and their social responsibilities, and Protestantism and Catholicism.<sup>5</sup> As important as these features were, though, McCormick’s defense of nontherapeutic research untethered consent from the covenantal content that Ramsey had tried to give it in *Patient as Person*. “Consent is the heart of the matter,” McCormick wrote about the disagreement: “If the parents could legitimately consent for the child, then presumably experimental procedures would not make an object of the infant and would be permissible.”<sup>6</sup> For Ramsey, though, *legitimacy* is the heart of the matter. On his view, consent is the “chief *canon of loyalty*” between the patient and the doctor or researcher.<sup>7</sup> While consent is the criterion for entering joint partnership, it is only an (essential) *epistemic guide* for discerning whether the relationship between doctors and patients is adhering to the norms of faithfulness. It is insufficient to make research or medical action licit. The “principle of informed consent,” he writes, “is a statement of the fidelity between the man who performs medical procedures and the man on whom they are performed.” Consent begins the relationship, but fidelity “is the bond.” Consent within the medical relationship only specifies “the faithfulness that is normative for all the covenants or moral bonds of life with life.”<sup>8</sup> Ramsey co-opts Reinhold Niebuhr’s formula about democracy to argue that the “capacity to become joint adventurers in a common cause” makes consent possible, while humanity’s “propensity to overreach his joint

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<sup>3</sup> Ramsey recounts this exchange in “Response II,” in *Covenants of Life*, 223. Bartholome’s rejoinder was published here: Bartholome, William G. “Parents, Children, and the Moral Benefits of Research.” *The Hastings Center Report* 6, no. 6 (December 1976): 44. Ramsey’s response is in Ramsey, Paul. “Ordinary Risks of Childhood.” *The Hastings Center Report* 7, no. 2 (April 1977): 4.

<sup>4</sup> Ramsey, Paul. “Ordinary Risks of Childhood.” *The Hastings Center Report* 7, no. 2 (April 1977): 4. See also Ramsey’s essay a year later on the same theme. Ramsey, Paul. “Ethical Dimensions of Experimental Research on Children.” In *Research on Children: Medical Imperatives, Ethical Quandaries and Legal Constraints*, edited by Jan Van Eys, 57–67. Baltimore: University Park Press, 1978.

<sup>5</sup> On the way love and justice structured their debate, see Childress, James F. “Protestant Perspectives on Informed Consent (Particularly in Research Involving Human Participants).” *Fordham Urban Law Journal* 30, no. 1 (2002): 187-205.

<sup>6</sup> McCormick, Richard A. “Proxy Consent in the Experimentation Situation.” *Perspectives in Biology and Medicine* 18, no. 1 (1974): 2–20.

<sup>7</sup> Ramsey, Paul. *The Patient as Person: Explorations in Medical Ethics*. 2. ed. The Yale ISPS Series. New Haven: Yale University Press, 2002, 2.

<sup>8</sup> *Ibid.*, 5.

adventurer even in a good cause makes consent necessary.”<sup>9</sup> For Ramsey, consent does not on its own render a partnership licit, but presupposes deeper and more fundamental norms about what we should consent to do with whom.<sup>10</sup>

When it comes to the question of research with children, Ramsey argues that the nature and meaning of parenthood as a covenant between generations lies at the heart of those deeper and more fundamental norms. For Ramsey, the same norms of fidelity that require consent in patient-doctor situations makes parental consent to research with children unqualifiedly wrong. But it is parenthood, and not abstract considerations of risk or harm or wrongdoing, that Ramsey thought was the decisive matter. Consider Ramsey’s distillations of his approach. To McCormick he wrote that their “fundamental disagreement...resolves around whether the standard for the treatment of children and of the responsibilities of parenthood rests upon the goods to which human nature inclines simpliciter or the good to which human nature in childhood inclines, given its vulnerability and need.”<sup>11</sup> In 1978, he suggests that the “point in parental consent” concerning either treatment or research is “the fidelity of parenthood.”<sup>12</sup> The “structure of [his] argument,” he writes in 1987, “was...that the moral *role* of ‘parenting’ is to protect one’s children from all harm, to nurture them in all sociability; and that to expose them to the possibly additional harms of nonbeneficial or unrelated experimentation was a deliberate violation of responsible parenthood.”<sup>13</sup>

Ramsey’s interlocutors did not get the message. Stanley Hauerwas, for instance, proposed that for Ramsey medical ethics “is but the working out of the ‘ethics of consent.’” On Hauerwas’s reading, Ramsey’s Constantinian commitments and reductionistic account of neighbor-love sidelines ecclesiological and other explicitly theological concerns. In short, Ramsey’s Protestant liberalism makes him susceptible to political liberalism. His inability to set definite social or medical priorities tacitly affirms a view that Hauerwas argues assumes “no teleological account of the universe and society is intelligible.” In such an outlook, an ungoverned and ungovernable freedom is all we have left—and “consent is all we have to protect us from one another’s arbitrary desires.”<sup>14</sup> Ramsey

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<sup>9</sup> Ibid., 5-6.

<sup>10</sup> Ibid., 4.

<sup>11</sup> Ramsey, Paul. “The Enforcement of Morals: Nontherapeutic Research on Children.” *The Hastings Center Report* 6, no. 4 (August 1976): 22.

<sup>12</sup> Ramsey, “Ethical Dimensions of Experimental Research on Children,” 66.

<sup>13</sup> Ramsey, Paul, and Richard A. McCormick. “Ramsey and McCormick, Revisited.” *The Hastings Center Report* 17, no. 1 (February 1987): 39.

<sup>14</sup> Hauerwas, Stanley. “How Christian Ethics Became Medical Ethics: The Case of Paul Ramsey.” In *Religion and Medical Ethics: Looking Back, Looking Forward*, edited by Allen Verhey. Institute of Religion Series on Religion and Health Care, #1. Grand Rapids, Mich: W.B. Eerdmans Pub. Co, 1996, 79. This criticism is also made by D. Stephen Long, who contends that despite Ramsey’s explicit rejection of political liberalism, his reliance on consent

challenged Hauerwas on this reading of his work: it is the “meaning of parenthood and of guardianship that [he’s] after,” Ramsey responded, which he thought nullifies the accusation that he is a tacit liberal.<sup>15</sup> Thomas Murray, at least, recognizes the importance of specifying parenthood and its duties for Ramsey—but still proposes that for both McCormick and Ramsey the ethics of consent is the central issue, such that Ramsey’s “formulation of the problem is defective.” Where Hauerwas wants Ramsey to give up his tacit liberalism, Murray proposes that we should ask what the circumstances are under which parents are “morally permitted to enroll their children in nontherapeutic research”—which is more or less Ramsey’s question, even if he answers it with the simple definitiveness of “none.”<sup>16</sup>

In fact, the content and significance of ‘parenthood’ plays a decisive role in a range of Ramsey’s writings in the decade leading up to *Patient as Person*, and especially in *Fabricated Man*. While the two books were released the same year, the discussions they generated operated on largely independent, parallel tracks. The division is unfortunate, as *Fabricated Man* sharpens the importance of ‘parenthood’ for Ramsey’s moral reasoning, and demonstrates just how stringently Ramsey could construe ‘responsible parenthood.’ Though now fifty years on from their publication, I want to supplement the account of parenthood in *Patient as Person* with that on offer in *Fabricated Man* and Ramsey’s related writings. Such an effort is not strictly literary: my aim is to see whether such an expanded horizon might answer whether Ramsey’s concurrence with Bartholome’s critique is a concession or a genuine clarification of his view, and in that light to see whether Ramsey’s stringent rejection of nontherapeutic research with children can be rescued against recent philosophical criticisms. While Ramsey was narrowly focused on research in *Patient as Person*, his concerns about the shifting nature and meaning of parenthood were much broader: they emerged through Ramsey’s interventions on marriage, contraception, genetic intervention and abortion. Such a context clarifies why Ramsey thought the good of life and childhood were so closely intertwined, while also challenging the idea that despite his many protestations Ramsey’s account of ‘consent’ is a Trojan horse for liberalism.

## II. *Consent and Parenthood in Patient as Person*

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means his “position appears quite similar to liberal political theories of government.” Long, D. Stephen. *Tragedy, Tradition, Transformism: The Ethics of Paul Ramsey*. Boulder, Colo: Westview Press, 1993, 125. I revisit Long’s critique below.

<sup>15</sup> Ramsey to Hauerwas (Sept. 27, 1977), quoted in Long, *Tragedy, Tradition, Transforms*, 205.

<sup>16</sup> Murray, Thomas H. *The Worth of a Child*. Berkeley: University of California Press, 1996, 83.

Ramsey supplies two reasons for the ‘consent requirement’ to participate in research. Positively, the ‘faithfulness claims’ that an individual makes upon a researcher mean research must be a partnership, in which researcher and patient become “joint adventurers” in a common cause.<sup>17</sup> This constraint is tied to the fact that human beings are *more* than patients or experimental subjects: instead, the patient is “a *personal* subject.” To this positive justification for the consent requirement Ramsey adds a negative claim: “no man is good enough to experiment upon another without his consent.”<sup>18</sup> Still, while consent is necessary, it does not on its own make medical research permissible by itself. To adopt the Barthian formula that Ramsey adhered to, consent is the external basis of the partnership, while the “capacity to become joint adventurers in a common cause” is its inner basis. The two are distinct, but interdependent—and must both be there for medical research to be licit. The consent requirement specifies the form faithfulness-claims take in medical contexts. While consent is a *canon* of loyalty, the “strength of Ramsey’s position is found in loyalty itself,” as D. Stephen Long suggests.<sup>19</sup> Hence, Ramsey distances ‘consent’ and the partnership it inaugurates between doctor and patient from the language of contract, a move that he had long made in his writings on marriage and divorce law.<sup>20</sup> As with marriage, consent is not only required to inaugurate the relationship, but to sustain it. Even so, it is no solvent for other moral questions: the faithfulness-claims that arise from the bonds of covenant stand with, in, and around consent, preventing it from functioning as a standalone category for determining the moral rightness or wrongness of actions.<sup>21</sup>

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<sup>17</sup> Ramsey, *Patient*, 6.

<sup>18</sup> *Ibid.*, 7.

<sup>19</sup> Long, *Tragedy*, 124.

<sup>20</sup> A decade before *Patient as Person*, Ramsey distinguished between ‘consent’ that which would entail marriage is “only a legal contract” and marriage as “an expression of *covenant-bond*,” which “falls between or beyond marriage as *contract* or marriage as *status*.” Ramsey, Paul. “Sex and People: A Critical Review.” *Religion in Life* 30 (1960): 55.

<sup>21</sup> Cathleen Kaveny’s discussion of Ramsey’s understanding of consent and contract in *Ethics at the Edges of Law* is helpful on these points. In a footnote, she suggests that Ramsey changes his outlook on the centrality of the consent requirement, pointing to Ramsey’s putative worry that the requirement “enthrones...an arbitrary freedom.” (Ramsey, *Ethics at the Edges of Life*, 157). However, Ramsey’s concern in that later work is the assertion of a *moral right* to decline treatment—which he thinks consent *per se* does not establish. Insofar as his account of consent does not treat it as a solvent for other moral concerns, his position across the two books seems consistent: he can hold that it is a requirement for morally licit forms of research, and argue that it does not permit morally bad decisions. Ramsey, of course, might have been wrong about whether it is licit to decline life-continuing ‘ordinary treatment.’ But that is a separate matter. See Cathleen Kaveny, *Ethics at the Edges of Law: Christian Moralists and American Legal Thought*. New York, NY: Oxford University Press, 2018; pages 154-155, and fn. 58 on pg. 267.

Ramsey heightens the normative force of these arguments for the consent requirement by locating them within a broader critique of the pressures and temptations that medical research uniquely introduces. Ramsey does not discount the value of medical research: it is “precisely because there are unknown future benefits,” he writes, that “may be believed to be so important as to be overriding” which makes the consent requirement especially important. As such benefits are the key to professional success for medical researchers, Ramsey argues that their bias toward will make the likelihood of departing from a moral norm “exceedingly great.”<sup>22</sup> The importance of research is partially the grounds for temptation: “man’s propensity to overreach as a joint adventurer even in a good cause...makes consent necessary.”<sup>23</sup> These “material and spiritual pressures upon investigators” supply good reasons for “strengthening the requirement of an informed consent.”<sup>24</sup> These temptations arise not only from the lures of professional advancement, but are intrinsic to the aims of research, at least as Ramsey understood them. Ramsey sees “all mankind” as the beneficiaries of medical research, which he seems to think establishes unique temptations to instrumentalize individuals who participate.<sup>25</sup> Consequently, Ramsey argues we should act ‘as if’ there will be no exceptions to the consent requirement for adults, a stance that is primarily a practical disposition, rather than a theoretical one—even if it is both a “rule-assuring” and “principle-strengthening” amendment.<sup>26</sup> To put the point in legal terms, Ramsey argues the social environment of medical research requires ‘strict scrutiny’ around consent, lest we admit even a conditional willingness to instrumentalize individuals for the sake of future benefits.<sup>27</sup> Whatever weight the ‘research imperative’ has, it must be held in “incorrigible conflict” with the responsibility to protect individuals—leaving those who undertake research with the task of ‘sinning bravely’.<sup>28</sup>

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<sup>22</sup> Ramsey, *Patient*, 9.

<sup>23</sup> *Ibid.*, 8.

<sup>24</sup> *Ibid.* 10.

<sup>25</sup> Ramsey draws this language from the AMA’s *Ethical Guidelines for Organ Transplantation*, which suggests that “All mankind is the ultimate beneficiary of [these practices.]” Cited on PP, 2. See also PP, 10, where Ramsey describes the researcher as motivated by the benefits that would ultimately accrue to all mankind. In contemporary parlance, Ramsey seems to affirm ‘research exceptionalism,’ or the idea that medical or other forms of social research involving persons has unique risks and so merits the heightened scrutiny of review boards and the like. James Wilson and David Hunter distill what seems to have been Ramsey’s intuition: “The aim of research is different from other contexts with similar risks, such as health care. This is because research does not (in general) aim specifically to benefit the participants; instead, the aim is to generate knowledge.” Hunter, David, and James Wilson. “Research Exceptionalism.” *The American Journal of Bioethics* 10, no. 8 (August 6, 2010): 50.

<sup>26</sup> Ramsey, *Patient*, 9.

<sup>27</sup> *Ibid.*, 11. In response to McCormick, Ramsey admits that there is a ‘research imperative,’ which “summarizes a multitude of positive moral duties to concrete persons in need of future medical assistance.” However, he argues that his concern was the *weight* that such an imperative has in relation to the protections we afford to research subjects. Ramsey, Paul. “Children as Research Subjects: A Reply.” *The Hastings Center Report* 7, no. 2 (April 1977): 40.

<sup>28</sup> Ramsey, ‘Some Rejoinders,’ 212.

Given such an interpretation of the pressures medical research generates, it is not surprising that Ramsey argued there is no need to act ‘as if’ there will be no new exceptions to the consent requirement for nontherapeutic research with children: the faithfulness claims that children make upon parents rule out any such research from the start. Research must have some relation to that particular child’s health—either at the present moment, or as a way of preventing children from being caught up in an epidemic. As Ramsey bluntly writes, “no parent is morally competent to consent that his child shall be submitted to hazardous or other experiments having no diagnostic or therapeutic significance for the child himself.”<sup>29</sup> To experiment upon a child without some relation to their status *as patients* is “already a sanitized form of barbarism,” which pays “no attention to the faithfulness-claims which a child, simply by being a normal or a sick or a dying child, places upon us and upon medical care.”<sup>30</sup> When research has some connection to the child’s recovery, one must still make a proportionate judgment about the peril of treatment and the “diagnostic or therapeutic needs of the child.”<sup>31</sup> But this judgment is derivative on the faithfulness claims children make on their parents to not instrumentalize them for the sake of medical knowledge that might benefit other people or children, *without* any such benefit to themselves.

Embedded within Ramsey’s argument against nontherapeutic research with children is an account of childhood and its significance, which moves the good of life into the foreground. Allowing children to participate in nontherapeutic research means, infamously, treating “a child as not a child.”<sup>32</sup> On Ramsey’s view, children are incapable of the consent required to become partners with the researcher in a common cause.<sup>33</sup> McCormick thought that such a depiction of childhood was unremittingly individualistic, that it failed to give full due to the inscribed sociality of human nature.<sup>34</sup> Ramsey’s concern, though, is to preserve and protect the child’s subjectivity *as a child* within the unique environment that medical research creates: the *exercise* of sociality comes later, and with it the possibility of consenting to nontherapeutic research. The problem with McCormick’s approach, Ramsey argues, is that it simultaneously treats children “*as if* they possessed at least minimum moral agency, while acknowledging that they do not.”<sup>35</sup> The child is not a “moral agent.” Instead, the

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<sup>29</sup> Ramsey, *Patient*, 13.

<sup>30</sup> *Ibid.*, 13.

<sup>31</sup> *Ibid.*, 12.

<sup>32</sup> *Ibid.*, 14.

<sup>33</sup> *Ibid.*, 14.

<sup>34</sup> McCormick, Richard A. “Experimentation in Children: Sharing in Sociality.” *The Hastings Center Report* 6, no. 6 (December 1976): 42.

<sup>35</sup> Ramsey, Paul. “The Enforcement of Morals: Nontherapeutic Research on Children.” *The Hastings Center Report* 6, no. 4 (August 1976): 25. Elsewhere, Ramsey writes that his objection to McCormick’s view “is rather to the

“preservation of life and a healthy life and growth” are uniquely important in childhood. While other human goods are “guides for parental nurture and for moral education,” they cannot form the basis for proxy consent for research with children.<sup>36</sup> Because of this emphasis, consent is licit when it is “anchored in the child’s single-minded orientation toward the unimpaired life to which nature inclines in infancy.”<sup>37</sup>

Even so, Ramsey contends that the content of ‘childhood’ is of secondary importance to his argument. Instead, he suggests that the language of consent “directs us rather to the moral substance of ‘parenthood,’ physicians’ care and protection, and the state’s power of *parens patriae* as a ‘role’ or ‘relationship.’”<sup>38</sup> As Thomas Murray notes, Ramsey does not itemize an “authoritative list of parental duties.”<sup>39</sup> While Ramsey gives hints in *Patient as Person* as to what parenthood requires, Murray fails to see in them sufficient justification for the “frightfully strong and austere conclusion” that enrolling children in scientific studies “where the risks are minimal or negligible” violates parenthood as such.<sup>40</sup> That may be because Ramsey’s argument operates on two tracks: while he is attentive to the ‘covenantal obligations’ that parents have toward children, he also seems to think the social role of parenthood has a distinct meaning and significance which gives it its own moral weight. Again, Ramsey only gives hints as to what this significance might be. For one, he contends a “parent’s decisive concern is for the care and protection of the child, to whom he owes the highest fiduciary loyalty, even when he also appreciates the benefits to come to others from the investigation and might submit his own person to experiment in order to obtain them.”<sup>41</sup> Ramsey learned the concept of fiduciary responsibilities from his reading in common law, as Robert Tuttle points out. In Tuttle’s description, the “law requires the fiduciary to exercise...discretion, with due care, in the beneficiary’s best interests....The fiduciary’s loyalty may not be divided between herself and her beneficiary; it must belong to the beneficiary alone.”<sup>42</sup> This fiduciary dimension of parenthood means that children and their interests are non-fungible to parents: they cannot be set aside for the

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presupposition that children or other incompetents are capable of willing the minimum of good of others. Absent voluntarily (not absent charity), presumed consent should stay within the limits of the subject’s correctly construed desire for an unimpaired life.” See Ramsey, ‘Some Rejoinders,’ 229.

<sup>36</sup> Ramsey, *Patient*, 22.

<sup>37</sup> *Ibid.* 23.

<sup>38</sup> Ramsey, Paul. “Children as Research Subjects: A Reply.” *The Hastings Center Report* 7, no. 2 (April 1977): 40.

<sup>39</sup> Murray, *Worth of a Child*, 79.

<sup>40</sup> *Ibid.*

<sup>41</sup> Ramsey, *Patient*, 25. See also *The Ethics of Fetal Research*, where Ramsey writes that the model for “legitimate parental consent in place of a child’s is...proxy consent that is medically *on behalf of* the child.” (92)

<sup>42</sup> Tuttle, Robert W. “Paul Ramsey and the Common Law Tradition.” *The Annual of the Society of Christian Ethics* 16 (1996): 197. Tuttle helpfully points out that Ramsey’s language of ‘partnership’ and ‘joint adventurers’ were taken from Judge Benjamin Cardozo’s opinion in *Meinhard v. Salmon*.

sake of third parties. No child is “part of childhood,” which means parents may not benefit other children *through* their child without their child participating in the same sorts of benefits. The prioritization of the child’s interests is thus exclusive, in that they trump any other concerns.<sup>43</sup>

The exclusive and prioritizing aspects of parenthood and the unique pressures of medical research together structure the reasons Ramsey lays down for why we ought not enroll children in research that has even ‘minimal risk.’ On the one side, faithfulness requires that “we not inflict pain or risks in addition to those of ordinary daily living” on children.<sup>44</sup> Ramsey (eventually) grants that the “moral *role* of ‘parenting’” includes nurturing children in sociability. But he retains the stance that a parent has the duty to “protect one’s children from all harm,” and that “to expose them to the possibly additional harms of nonbeneficial or unrelated experimentation [is] a deliberate violation of responsible parenthood.”<sup>45</sup> Considerations of risk are thus uniquely structured by the grammar of parenthood, and by the exclusiveness of the fiduciary responsibilities parents have to their children. There might be other contexts, such as war, where we impose risks on other parties without expecting that they might receive compensatory benefits. But insofar as Ramsey understood nontherapeutic research to be ordered toward benefiting third parties and *not* the child itself, he saw it as breaking the “covenantal obligations of parents to children—the protection with which a child should be surrounded, and the meaning and duties of parenthood.”<sup>46</sup> The “*power* of proxy consent” that parents enjoy is “not a *right*.”<sup>47</sup> As such, “fidelity to a human child...includes never treating him as a means only, but always also as an end.”<sup>48</sup> Permitting children to undertake nontherapeutic research breaks parenthood: the child is wronged, as they are no longer being treated as a child but as “the property of another.”<sup>49</sup> Such an objectification arises, specifically, when the researcher is interested in parts of the patient’s bodily functioning, rather than the child as ‘patient-subject’ as such. While children might be harmed by being subject to unnecessary risks, they can also be

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<sup>43</sup> See also Ramsey, *Patient*, 40: We “owe the individual child the highest fiduciary loyalty we know how to perform. Basically contradictory to this it would be to consent to submit a child to procedures believed not to be in the child’s behalf. Parenthood was not made for this.” Kaveny’s discussion of Ramsey’s understanding of consent is marred by the absence of any discussion of how Ramsey’s concern for honoring fiduciary responsibilities affects his account of the limits of parental consent. See Kaveny, *Ethics at the Limits of Law*, 154-155.

<sup>44</sup> Ramsey, *Patient*, 35.

<sup>45</sup> Ramsey, Paul, and Richard A. McCormick. “Ramsey and McCormick, Revisited.” *The Hastings Center Report* 17, no. 1 (February 1987): 39.

<sup>46</sup> Ramsey, *Patient*, 36.

<sup>47</sup> *Ibid.* 25.

<sup>48</sup> *Ibid.* 35. This limitation is not even limited by age: the “canon of loyalty” to not subject children to investigations is based strictly on whether they are a “human child or incompetent.” *Ibid.*, 14.

<sup>49</sup> *Ibid.*, 35.

wronged, which Ramsey correlates with laws preventing battery.<sup>50</sup>

And yet, Ramsey's account of 'parenthood' is rather thin in *Patient as Person*: his argument leans on it, yet he does not explicitly develop it. Subsequently, Ramsey's invocation of the language of 'instrumentalization' and of 'battery' seems more like a histrionic, overwrought response to unfounded anxieties than like a conclusion that emerges organically from his argument. That may be because the primary context where Ramsey worked out his account of parenthood and its norms was not medical experimentation, but the ethics of genetic intervention, abortion, and contraception. In 1966, while the Roman Catholic Church was debating whether to approve contraception, Ramsey examined the notion of 'responsible parenthood'—the phrase to which he would turn in his account of medical research—in response to Fr. Bernard Haering.<sup>51</sup> At the same time, Ramsey began wading in to the question of abortion. Between 1966 and 1967, some seven years before *Roe v. Wade*, Ramsey offered some of his most substantive critiques of the practice.<sup>52</sup> Ramsey's contributions to the ethics of 'genetic control' also arise during the same season. He wrote "Moral and Religious Implications of Genetic Control" in 1966, which formed the basis for *Fabricated Man*—a book that was released the same year as *Patient in Person*. While Ramsey never systematically explained and defended his account of the role and significance of parenthood, it has far more purchase on his thought than the hints in *Patient as Person* might indicate.

### III. *Parenthood in Fabricated Man and Elsewhere*

*Fabricated Man* does not belong in the pantheon of classics in Protestant moral theology. The work ranks among the finest displays of Ramsey's infamously turgid prose, and his endorsement of a program of "voluntary genetic control" because humanity "may be becoming not only physically, but mentally and morally *less fit*" is shocking for its accommodating stance toward eugenic attitudes. Where the influence of the Nuremberg Code and the specter of Naziism looms over *Patient as*

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<sup>50</sup> *Ibid.*, 37, 39.

<sup>51</sup> Ramsey, Paul. "Responsible Parenthood: A Response to Fr. Bernard Haering." In *The Vatican Council and the World of Today*. Providence, R.I.: Office of the Secretary, Brown University, 1966. This was adapted for publication in 1967 as well. See Ramsey, Paul. "Responsible Parenthood: An Essay in Ecumenical Ethics." *Religion in Life* 26, no. 3 (1967): 343–54.

<sup>52</sup> "The Morality of Abortion" was published in 1966. It is the most substantive account of the subject that Ramsey writes, and demonstrates his indebtedness to Karl Barth's account of the ethics of 'life' in III/4 of the *Church Dogmatics*. Ramsey returned to the theme at a conference in 1967, which he describes in *Covenants of Life*, 253, out of which he published "The Sanctity of Life—in the First of It" in the *Dublin Review*. See Ramsey, Paul. "The Morality of Abortion." In *Life or Death: Ethics and Options*, edited by Edward Schils, 60–93. Portland: Reed College, 1968. See also Ramsey, Paul. "The Sanctity of Life in the First of It." *The Dublin Review* 511 (1967): 3–23.

*Person*, Ramsey fails to see in *Fabricated Man* that even voluntary (negative) eugenics programs might enshrine the very attitudes toward “defective individuals” that he elsewhere was concerned to resist.<sup>53</sup> At the same time, *Fabricated Man* puts Ramsey’s theological convictions on the surface. In this way, it provides a helpful and illuminating complement to *Patient as Person*, where the grammar of covenant provides the framework for Ramsey’s thought, but which is otherwise less overtly theological.

More centrally for our purposes, *Fabricated Man* makes clear how Ramsey could invoke parenthood as an independent source of moral reasons. Drawing from Karl Barth, Ramsey contends that parenthood is “a basic form of humanity,” and as such takes precedence over ‘personhood’ in the ethics of creating human life in laboratories. To “violate [parenthood] is already dehumanizing,” Ramsey contends, “even if spiritualistic or personalistic or mentalistic categories are invoked to justify it.”<sup>54</sup> When it comes to originating life, personhood is insufficient: the “parameters of human life...are grounded in the man of flesh *and in the nature of human parenthood.*”<sup>55</sup> Here as well parental obligations cannot be reduced to generalizable considerations of risk or harm: rather, we weigh the risks of harm against the backdrop of norms about parental conduct. Ramsey also makes the same argument negatively: while he objects that procreation has been “debiologized and recombined in various ways,” he also suggests that for that to happen “parenthood must first be broken or removed.”<sup>56</sup> Ramsey’s concerns in *Patient as Person* about the unique temptations the research imperative generates are transposed in *Fabricated Man* into anxieties about the “powerful pressures in our technological civilization” toward breaking and recombining the “personal and biological dimensions in human procreation.” Yet Ramsey’s prophylactic against these challenges is the charge to “highly respect the God-given nature of human parenthood.”<sup>57</sup> Clearly the category is doing a great deal of moral work for Ramsey’s view.

Ramsey has room in his account for adoptive parenthood, but in the late 1960s he was especially concerned to articulate the significance procreative parenthood. The possibility of separating sex from conception animated Ramsey to explain why they must be held together. While he argued that

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<sup>53</sup> Ramsey, Paul. *Fabricated Man: The Ethics of Genetic Control*. New Haven: Yale University Press, 1970, 41, 7. Ramsey rejects positive eugenics programs, including those that would attempt to select “superior types to be favored in reproduction.” On his view, selecting for body or phenotype would be wrong because “of its massive assaults upon human freedom and its grave violation of the respect due to men and women now alive and to human parenthood as such”. *Ibid.*, 61.

<sup>54</sup> *Ibid.*, 131.

<sup>55</sup> *Ibid.*, Emphasis mine.

<sup>56</sup> *Ibid.*, 135.

<sup>57</sup> *Ibid.*, 136. Ramsey also worries a “subtle but significant shift has taken place from doctoring primary patients to doctoring that nonpatient, the human race,” which would put individuals in danger of being instrumentalized for the sake of research aims. *Ibid.*, 121.

the task of Roman Catholicism was to overcome the “rigidity and seeming ‘naturalism’” of the moral bonds between conjugal love and procreation, the “task facing Protestantism is the often quite unacknowledged need to forge them again.”<sup>58</sup> No wonder, then, that in *Fabricated Man* he proposed that the “nature of human parenthood may be summed up by saying that conjugal intercourse is a life-giving act of love-making or a love-making act of life-giving.”<sup>59</sup> The “eminently human communications” that structure procreation are prior to the vegetative or physical dimensions of sex.<sup>60</sup> Keeping together the unitive and procreative ends of marriage—at least *in principle*, if not in every act—distinguishes human parenthood from the generation of life that other animals undertake.<sup>61</sup> By procreating in this way, humans reveal a “trace of the original mystery by which God created the world because of His love.”<sup>62</sup> Again, nothing Ramsey writes here precludes affirming adoptive parenthood as a genuine covenant. In 1959 Ramsey had critiqued the assumption inherited from common law that “blood sonship” is “the only true form of sonship,” defending a form of adoption that would “perfectly simulate natural sonship.”<sup>63</sup> Even so, this simulation only goes one direction: while Ramsey has room for adoptive parental bonds, their content and significance is determined by procreative parenthood.

Ramsey’s concern to develop ‘parenthood’ as a substantive moral category, and especially procreative parenthood, is animated by two interrelated threats that he saw as corroding the covenants of life that bind generations together: an “atomistic” or ‘atomic’ individualism, and a dualistic division of body and soul. The former concern pervades his writing about marriage, but extends into *Fabricated Man*. In 1959, Ramsey was still convinced the law had not yet adopted a “a purely individualistic, contractual conception of [marriage and divorce].”<sup>64</sup> Employing language that he would draw on in *Patient as Person*, Ramsey argued that marriage and parenthood are instead statuses established by consent, such that “one immediately has a wife or a son and is a husband or father without yet having acted as such toward them in matters that go beyond the pledge binding one life together with another life.”<sup>65</sup> Such a status depends on the fact that marriage is a covenant, which “affirms the will’s competence to bind itself to another, and thus to exhibit a fuller freedom”

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<sup>58</sup> Ramsey, “Responsible Parenthood,” 343.

<sup>59</sup> Ramsey, *Fabricated Man*, 87.

<sup>60</sup> *Ibid.*, 88.

<sup>61</sup> *Ibid.*, 33.

<sup>62</sup> *Ibid.*, 88.

<sup>63</sup> Ramsey, Paul. “The Legal Imputation of Religion to an Infant in Adoption Proceedings.” *New York University Law Review*, 34 (1959): 690.

<sup>64</sup> Ramsey, ‘Adoption,’ 689.

<sup>65</sup> Ramsey, Paul. “Marriage Law and Biblical Covenant.” *Religion and the Public Order* 1 (1963): 66.

than a union of two “contracting atomistic individuals.”<sup>66</sup> The state has the authority to dissolve marriages in order to restrain sin, but Ramsey insists acknowledging this is no concession to “atomic individualism.”<sup>67</sup> In *Fabricated Man*, Ramsey argues that ‘atomistic individualism’ and science combine to further dissolve marital and procreative bonds, citing as evidence critiques from genetic researchers that marriage has undue proprietorship over genetic transmission.<sup>68</sup> These forces, he argues, have dissolved the bonds between parents and children, and personal love and procreation, rendering Christian convictions about them unintelligible.<sup>69</sup> To the extent that Ramsey did accommodate eugenic concerns, he limited his policy proposals to those that had some reference to marriage.<sup>70</sup> Anyone concerned about genetic medicine, he argues, should “be set against all those influences in our society leading to steadily increasing illegitimacy and to the more by which getting pregnant is fast becoming an accepted way...for getting married.”<sup>71</sup> In other words, restoring the moral content of marriage and parenthood would undercut the need for more tyrannical interventions by the state in its efforts to preserve the species’ genetic health.

Ramsey also thought, though, that ‘atomistic individualism’ is fueled by a sharp division between the body and the soul, which allows for the instrumentalization of the former for ends that have nothing to do with the person. On Ramsey’s view, the “acids of modern liberalism” have eaten away

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<sup>66</sup> Ibid., 54.

<sup>67</sup> Ibid., 72-73.

<sup>68</sup> Ramsey, *Fabricated*, 39.

<sup>69</sup> Ibid., 40.

<sup>70</sup> He floated the idea of both mandatory pre-marital genetic counseling and a marriage licensing scheme. Ibid., 97.

<sup>71</sup> Ibid., 98. The openness to such policies in *Fabricated Man* seems like a development in Ramsey’s thought. In his 1960 critical review of Richard Fagley’s book *The Population and Christian Responsibility*, Ramsey suggested there is danger that sex, marriage and family will “be forced into becoming chiefly a matter of public policy,” rather than of moral formation within churches. Ramsey worried there that a public policy would have to adopt “more than nearly tyrannical means” of slowing population growth, which would involve folding the whole of marriage and family into the “public domain,” and thereby “abolishing the distinction between the private and public spheres”. (Ramsey, ‘Sex and People,’ 66-69). By 1970, Ramsey seems to have thought that such spheres were already collapsing. Either way, Ramsey’s limitation to policies focused on marriage and parenting is instructive, given the possibility that such policies might have been governed instead by the abstraction of “future generations.” Ramsey in is no more despairing in *Fabricated Man* about the future than he was a decade earlier. Indeed, in both texts Ramsey proposes that religious people “have never denied, indeed they affirm, that God means to kill us all in the end, and in the end He is going to succeed,” a theme he had also sounded in ‘Sex and People.’ (*Fabricated Man*, 27; Sex and People, 65). Instead, Ramsey seems to treat the “relatively imperative ends” of improving the gene pool (or not further eroding it) to be sufficiently weighty as to compelling individuals to do their part to do so. I take it that the shift in Ramsey’s view is animated by the concrete and definite harms he saw arising for the children who are created from, say, unions that would have high likelihoods of passing on congenital diseases. As Ramsey resisted watering down the medical profession to caring for the non-patient of the human species, rather than individuals, so Ramsey seems to resist placing on couples an abstract responsibility to care for future generations. Instead, such a responsibility is mediated through their own marital and procreative choices, which would have direct bearing on individual children to whom they would owe fiduciary responsibility. Hence Ramsey’s willingness to endorse voluntary childlessness over putatively ‘risky’ therapeutic genetic interventions.

at the moral bonds of marriage, intergenerational piety, and the connection between “conscious life and nascent life.”<sup>72</sup> Yet the fragmentation of these bonds has its roots in “the death of the bond of soul with body in the understanding of personal life in a dualistic age.”<sup>73</sup> Such a division sanctions the division between sex and conception that Ramsey thinks undermines parenthood as the ‘basic form of humanity.’<sup>74</sup> As Ramsey writes in the preface to *Patient as Person*, as “man is a sacredness in the social and political order, so he is a sacredness in the natural, biological order.” Ramsey goes on: “He is a sacredness in bodily life...He is an embodied soul or ensouled body.”<sup>75</sup> While Ramsey seems to ground this sacredness internally within the nature of the human being, at the outset of his preface he includes the ‘sanctity of life’ as among those “moral and religious premises” which he must make explicit.<sup>76</sup> Only two years previously, in a substantive defense of a non-dualistic anthropology, Ramsey introduced the same formulation with the qualification that it arises from the “religious outlooks and ‘on-looks’ that have been traditional to us.”<sup>77</sup> There, Ramsey is explicit that the sanctity of human life has an origin “alien to him,” such that it matters little for the morality of abortion whether we think life begins at conception or no.<sup>78</sup> Three years after *Patient as Person*, Ramsey would move the theological foundation into the center of the expression: “Human beings are a sacredness,” he writes, “under God, in the biological order.”<sup>79</sup>

Framing Ramsey’s conception of ‘parenthood’ within this broader context helps explain, I think, why Ramsey placed such a sharp emphasis on the good of *life* as constitutive of childhood. Ramsey’s concerns about how a body-soul dualism was leading to degraded treatment of individuals was in place well before *Roe v. Wade*. Yet throughout his writings, he closely intertwined the meaning and significance of parenthood with generating and caring for human life. In *The Ethics of Fetal Research*, which was published in the midst of his debate with McCormick and which was also overlooked by Ramsey’s critics, Ramsey argues that we ought not use aborted fetuses for research, as doing so would render ‘maternal’ consent incoherent. The “very meaning of legitimate proxy ‘consent,’” he argues, “has been abrogated in the majority of contemporary abortion situations.” Proxy consent is legitimate when it is “*on behalf of* the child,” which abortion contradicts. The ‘care’ that is the

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<sup>72</sup> Ramsey, “Responsible Parenthood,” 343.

<sup>73</sup> *Ibid.*

<sup>74</sup> Ramsey, *Fabricated Man*, 131-135.

<sup>75</sup> Ramsey, *Patient as Person*, xlvi.

<sup>76</sup> *Ibid.*, xlv.

<sup>77</sup> Ramsey, “Morality of Abortion,” 72.

<sup>78</sup> *Ibid.* 71.

<sup>79</sup> Ramsey, Paul. “Abortion: A Review Article.” *The Thomist: A Speculative Quarterly Review* 37, no. 1 (1973): 181.

“attribute or virtue that qualifies parents as proxies” is incommensurate with the decision to terminate. For mothers to be authorized to consent to such research *as* mothers, they “would have to be assumed able and willing to act *as if* she (they) *cared* for the fetus”—which seems “doubtful in a great number of cases.”<sup>80</sup> For Ramsey, the establishment of parenthood in and through the generation of life wove the two concepts inextricably together, such that to violate the one is to corrode the other. Ramsey’s worries about ‘unconsented touching’ for children turn on this interdependence: parenthood means generating the life of a person who is a bodily soul, ensouled body, and then nourishing and caring for it.

Moreover, Ramsey’s vociferous opposition to ‘atomistic individualism’s’ corrosive effects on parenthood clarify why he thought even ‘minimal risks’ were too high to impose on children for the sake of nontherapeutic research. For Ramsey, parenthood is its own source of reasons and norms, which are not reducible to considerations of harm or well-being but are the backdrop against which those categories are assessed. To isolate risk assessments from this backdrop effectively eviscerates the parent-child bond, and with it the whole domain of privacy, as the child’s putative social ‘obligations’ might be invoked by the state to coerce children into nontherapeutic research that has low or minimal risk. Parents are obligated both to diminish the risks of pain and suffering for their children and (especially) to *not* impose such risks on them. “Faithfulness to a child includes the requirement that we not inflict pain or risks *in addition to* those of ordinary living,” he writes.<sup>81</sup> For Ramsey, ‘atomistic individualism’ had both rendered the significance of the parent-child bond unintelligible, and aligned itself with a scientism that threatened to further degrade human life through genetic interventions. Such a conjunction meant that to fulfill the aims of research, the people who are subjected to its risks are not the same people who might benefit from them. Ramsey doubtlessly understood that parents could not raise their children free from risks. But the risks of “ordinary living” arise, he thought, from activities and practices that were ordered toward some benefit for the child. The ‘atomistic individualism’ Ramsey worries about, though, makes possible the child’s instrumentalization through rendering the parent-child bond that should prevent it unintelligible. Parenthood for Ramsey is a bulwark that prevents children from being absorbed into the abstract or generalized duties to ‘benefit humanity’ or ‘future generations.’

Situating Ramsey’s understanding of medical research in this broader context supplies some reason to see his concurrence with Bartholome’s argument that the benefits of research might

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<sup>80</sup> Ramsey, Paul. *The Ethics of Fetal Research*. New Haven London: Yale University Press, 1975, 95.

<sup>81</sup> Ramsey, *Patient*, 35.

include moral or psychological benefits as a clarification of his view in *Patient as Person*. Ramsey's standard that parents ought not impose risks on children *in addition* to those of 'ordinary life' is stringent—but becomes more intelligible if we add the corollary that the moral benefits of medical research can be gained by the child through other, risk-free means. In *Fabricated Man*, Ramsey argues that as long as not procreating remains possible, it is preferable to procreating a child who might need serious genetic treatments. If genetics can demonstrate that a person cannot be “the progenitor of healthy individuals (or at least not unduly defective individuals),” then their right to have children “becomes a duty not to do so, or to have fewer children than he might want.”<sup>82</sup> The risks that could accompany genetically removing a disease like diabetes are such that one should not impose them upon children—again, crucially, at least as long as not procreating is an option.<sup>83</sup> In other words, if there *is* a no risk way of avoiding harm, then one should pursue it—even if it means one simply does not satisfy one's own good of having children. The freedom to parent is “a freedom to good parentage, and not a license to produce seriously defective individuals to bear their own burdens.”<sup>84</sup> As long as not procreating remains the default, then any exposure to non-ordinary risks is an imposition of harm on the child. “We need to know what we say,” Ramsey concludes, “when we speak of responsible parenthood.”<sup>85</sup> Though Ramsey does not draw the line between this approach and his stance against even research that has ‘minimal risks,’ it is clearly commensurate: Ramsey could grant that children do need the kind of moral formation and training in sociality that Bartholome defends—but as long as there remains an option to accrue such benefits to the child without the additional risks, that is the option parents are obligated to take. Hence Ramsey's heightened concern that the (unique) risks of research are *additive* to pre-existing risks. In this way, Ramsey's account seems like it has room for his concurrence with Bartholome's amendment to be a genuine clarification, rather than concession.

#### *IV. Can Ramsey's View be Saved?*

Ramsey's cautious approach to the ethics of nontherapeutic research did not triumph. As Albert Jonsen observes, “Richard McCormick's general perspective, if not his precise argument, had prevailed” over the National Commission for Protection of Human Subjects, which set federal

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<sup>82</sup> *Ibid.*

<sup>83</sup> Ramsey, *Fabricated Man*, 118.

<sup>84</sup> *Ibid.*, 98.

<sup>85</sup> *Ibid.*

policy on the question.<sup>86</sup> The failure is not surprising, given the above excavation of the manner of moral reasoning Ramsey employs, and the context in which his objections to nontherapeutic research with children sits. Ramsey's opposition to nontherapeutic research with children uses the language of consent and the conceptual architecture of the covenantal bonds and loyalty of parenthood—an architecture that he acknowledged was crumbling around him. Still, Ramsey's use of consent does not mean his employment of consent allows the liberalism he decried to sneak back in beneath the covers. In fact, Ramsey's appeal to 'parenthood' to oppose nontherapeutic research was overlooked by his interlocutors, I suspect, in part because it is difficult to grasp how the status and significance of parenthood can supply real moral reasons from within the liberal framework that Ramsey used it to resist.

There is reason to be skeptical, then, about D. Stephen Long's concurrence with Stanley Hauerwas that Ramsey is a crypto-liberal—or that his view lacks the resources to resist the acidic bonds of individualism he explicitly decried. On Long's reading, Ramsey's "use of 'covenant' as the possibility for 'consent'" within his marriage ethics is "due to the primacy of liberal democracy in his work."<sup>87</sup> Long does not object to 'consent' if the alternative is "tyranny, rape and coercion." But setting these as the alternatives makes "consent an a priori necessity," which eclipses questions of "which social formation will provide for a genuine consent," and whether consent is even possible.<sup>88</sup> Long questions whether everyone has the capacity "to become joint adventurers in common cause," on grounds that they may be under duress for economic or social reasons.<sup>89</sup> Consent, he worries, is simply not a "possible state of affairs." When Ramsey's emphasis on consent is coupled with his affirmation in *Patient as Person* on the immanent sacredness of bodily life, rather than its sacredness on the basis of its relation to God, "Ramsey's position appears quite similar to liberal political theories of government."<sup>90</sup>

It would so appear, if this were the full story. But the above gives reason to doubt that it is. Long overreads Ramsey's invocation of Niebuhr's dictum in grounding consent: while humanity's propensity to overreach makes consent necessary, it is by no means sufficient. One wonders whether Long would approve of a marriage *without* consent—a category which is indisputably prevalent in

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<sup>86</sup> Jonsen, Albert R. "Nontherapeutic Research with Children: The Ramsey versus McCormick Debate." *The Journal of Pediatrics* 149, no. 1 (July 2006): S14.

<sup>87</sup> Long, *Tragedy*, 61.

<sup>88</sup> *Ibid.*

<sup>89</sup> *Ibid.*, 124.

<sup>90</sup> *Ibid.*, 125.

modernity, but by no means exclusive to it. Long's critique of Ramsey conflates the consent that founds a political order with that which originates a marriage, a conflation he thinks Ramsey has tacitly made, but which Ramsey could quite easily reject—and which Ramsey does in fact explicitly reject. In his writings about marriage, Ramsey not only bends over backwards to differentiate his view from contractualism, but argues that contemporary marriage laws don't even rise to that standard.<sup>91</sup> Ramsey clearly concurs with Long's suggestion that when the covenantal bonds of marriage and medicine are "based on consent" they are, to that extent, similar to "liberal contract theories of government." But his accounts of medicine and marriage are also "based on claims others have on us regardless of the possibility of consent," and so are "much more biblical" than Long thinks liberal democracy is.<sup>92</sup> Ramsey holds together covenant and consent in a way that Long does not. On Ramsey's account, consent *per se* is not the source of the acidic destruction of family or other bonds: individualism is. Moreover, as I argued above, there is good reason to think Ramsey affirms in *Patient as Person* and his later works that the 'sacredness' of bodily life is finally grounded extrinsically, in God, rather than immanently in humanity. In that respect as well Ramsey's account has less in common with liberal individualism than Long argues.

Nor does Ramsey's account of parenthood rely upon a "best interests" criterion, as Lanie Friedman Ross has alleged. While Friedman Ross's emphasis on parental authority comes near to Ramsey's approach to the ethics of research, she rejects Ramsey on the grounds that his putative 'best interests' criterion for children, which she sees as arising from his rejection of imposing even minimal risks on children, "permits too much state intervention" and means parents cannot balance the needs of children with other family members.<sup>93</sup> But the exclusive primacy of children's interests for parents is not equivalent to a "best interests" standard. For Ramsey, parenthood supplies an independent source of reasons, which is irreducible to considerations of risk or wellbeing or other

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<sup>91</sup> Ramsey, 'Marriage Law,' 45-46. On Ramsey's argument, 'contract' "does not precisely describe the point at which we have arrived, for our legal and social standards and practices relating to marriage do not rise to that level of morality called for in certain more or less enduring contractual relationships in which the interests of the parties are closely intertwined." Ramsey then goes on to quote Justice Cardozo's opinion in *Meinhard v. Salmon*, which reads: "Joint adventurers, like copartners, owe to one another, while the enterprise continues, the duty of the finest loyalty." Ramsey in the same article differentiates the 'consent' that originates a marriage from that which is operative in the law. See *Ibid.*, 41. Ramsey does describe marriage as a "contract," but consistently uses scare quotes while doing so. *If it is a contract, it is an open-ended and irreversible contract. It is, in that sense, directly equivalent to the relationship established by adoption. Ibid.*, 66. In a long footnote, Ramsey points to the importance of consent to establishing marriage not only in the law, but in Roman Catholic theology. Such consent inaugurates a relationship that is irrevocable and indissoluble. *Ibid.*, 72.

<sup>92</sup> Long, *Tragedy*, 125.

<sup>93</sup> Ross, Lainie Friedman. *Children in Medical Research: Access versus Protection*. Issues in Biomedical Ethics. Oxford: Clarendon Press, 2008, 92-94.

moral categories. It is a morally significant status: it places parents under the responsibility to treat their child as their “highest fiduciary loyalty,” and is capable of being violated even if no one is harmed. Within that loyalty, though, one can balance the risks and benefits one exposes a child to in ‘ordinary life’ however one wants. The duty to care *as a parent* means declining to impose *additional* risks on children without any corresponding benefits to them, risks children would not be subject to otherwise. But this is a more capacious standard than the notion that parents must always act within their child’s ‘best interests.’ Moreover, Ramsey accepts an asymmetry between positive and negative norms, which further differentiates his account from ‘best interests’ approaches. Because negative norms are more morally weighty, parents have a more forceful obligation to avoid imposing unnecessary risks on children than they do to benefit them.<sup>94</sup> As such, Ramsey can contend “that when we speak of minimum or negligible risks we are still speaking of doing calculable harm to bring aid.”<sup>95</sup> To impose risks of harm on children *is* to harm them, if only by violating the canons of loyalty that bind children and parents together.<sup>96</sup>

The reading of Ramsey I have offered here also rescues it against objections from both David Wendler and Thomas Murray. Wendler develops a case in which your daughter is trapped in an abandoned well, and you dangle an unconscious thin man so that she can climb out. As the risks of harm to the man are very low, Wendler concludes that it is licit to use him. ‘Use’ of persons is not always ethically objectionable.<sup>97</sup> Wendler then fits the case to Ramsey’s own objection, by swapping out the thin man for a child. As the risk to the child would be low, and one has “very good reason to believe that the benefits to your daughter will be substantial,” he thinks the case demonstrates that it is licit to use the child. The case is an inventive one, and persuasive so far as it goes. But to actually be an instance of what Ramsey forbids, one would have to dangle one’s *daughter* in order to rescue a perfect *stranger*—the very reverse of the scenario Wendler establishes.<sup>98</sup> Moreover, one would have to allow third parties some role in dangling our children over the edge of the well. When described that way, I suspect most of our intuitions shift—we have stronger reasons to be wary about the ‘use’ of

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<sup>94</sup> Ramsey articulates this standard in “Children as Research Subjects: A Reply,” 40.

<sup>95</sup> *Ibid.*

<sup>96</sup> Ramsey’s argument that the state’s authority to terminate parent-child relationships is limited by when an individual’s well-being is threatened, and the constraints he puts down on the state imposing family-related policies, suggest further that his view is not quite equivalent to a “best interests” approach to parental rights and duties.

<sup>97</sup> Wendler, David. *The Ethics of Pediatric Research*. New York: Oxford University Press, 2010, 52-54.

<sup>98</sup> Ramsey is opposed to any such ‘use,’ of course: he presumably would not permit someone to dangle one’s daughter to rescue their sibling. But his argument against use in *research* is wrapped up with its peculiar aim of benefiting ‘humanity.’ Our intuitions in such cases are determined in part, I think, by whether we have bonds of partiality with the beneficiaries of our actions.

our children than we might have for other persons, reasons that Ramsey argues are founded upon the exclusive and primary fiduciary responsibilities of parenthood. The intuitive pull of Wendler's case relies in part upon these reasons: our strong desire to rescue their *daughter* would reasonably incline a parent to use whatever—or whomever—is at hand to do so. Wendler argues that Ramsey fails to consider “the possibility that competence not only gives individuals the ability to consent, [but] also affects what rights or interests they have.”<sup>99</sup> The problem, he thinks, with ‘unconsented touching’ is that it fails to get consent from someone who has the capacity to determine for themselves what happens to them. But this, he argues, is “not an interest or a right that you can contravene with respect to children.”<sup>100</sup> Wendler's objection is on point—but for Ramsey, it is just that difference that requires *heightened* scrutiny around children. Moreover, Ramsey's worry seems to be not only that a child might be ‘used’ without consent, but that the medical-research complex has a particular interest in *only* their bodies, rather than in their status as patient-persons. Abstracting children from this context, with the peculiar dangers and temptations that Ramsey thought arose out of its imperative to benefit ‘all humanity,’ distorts our intuitions about our responsibilities to *protect* those who are incompetent.

Similar rejoinders can be brought against Thomas Murray's counterexamples. Murray considers two cases: in one, parents lend their crib to a neighbor in need, accepting the minor risks that their child might fall out of bed. In the other, they lend their baby to a Christmas pageant, despite the fact that it may cause the baby temporary unhappiness. In neither case does the child experience a direct benefit, and both cases contain slight risks. For Murray, the cases indicate that protecting a child's physical safety is important, but not obviously decisive, and that we can reasonably accept risks to our children for the sake of benefiting third parties.<sup>101</sup> On Murray's view, if a parent “took Ramsey's comments about parental responsibilities with respect to research and generalized them to the whole of parenthood,” they would smother their child. Yet it is not clear that Ramsey is committed to this sort of generalization. His standard of not imposing risks *in addition to* those of ‘ordinary life’ suggests that he sees nontherapeutic research as a practice which in some ways sits outside of childhood (and ‘ordinary life’) just as such. Ramsey is acutely aware of the tendencies of medicine to reductionistically focus on the bodies of individuals in abstraction from their persons. As such, there is a limiting principle built into his critique of nontherapeutic research with children: within

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<sup>99</sup> *Ibid.*, 54.

<sup>100</sup> *Ibid.*

<sup>101</sup> Murray, *Worth*, 82-86.

environments that do not have those aims, and corresponding temptations, the risks parents subject their children to take are evaluated differently.

Does reconstructing Ramsey's objection to nontherapeutic research with children through the lens of his emphasis on childhood as being ordered toward the goods of life, and through his clarification to Bartholome that riskless research that generates moral or psychological benefits is licit, make it more plausible? On the reading I've given here, the criteria for determining whether a particular type of research is licit might be divided in two ways. First, research would be licit if there is parity between the *medical* benefits to the child and the risks of treatment, or when the medical benefits to the child outweigh the risks.<sup>102</sup> I take it that this is what Ramsey had in mind in sanctioning therapeutic research. Second, research might be justified if there are sufficient *moral* or *psychological* benefits to the child, and the risks of research do not directly threaten the good of the child's (organic) life. This way of framing Ramsey's view allows for participation in more forms of research (psychological experiments, for instance) than the narrower reading. But it would preclude forms of research like that which Murray lays out. In evaluating an experiment where children take hGH, Murray proposes that optimistic accounts of the physical risks and the social benefits allows us to "draw a rough analogy between enrolling one's child in this experiment or music lessons."<sup>103</sup> On this reading of Ramsey, though, however negligible the risk is of ingesting a foreign substance, it would still bear directly on the child's health and ability to live an unimpaired life.<sup>104</sup> In that sense, the disanalogies between the risks a child faces in taking music lessons and the risks that arise in medical research are crucial. It is not enough to abstractly quantify risks and harms, and then compare them—one must determine the source from which such risks arise, and what the underlying aims of the practice that generates them are. Whatever physical risks a child faces in taking music lessons are incidental to them. Those same risks might obtain while learning to read, or engaging in any other activity. But in nontherapeutic research, those risks are (part of) the point—as is the gap between the bearer of the risks and the beneficiaries of the knowledge. Parents may not put their children in environments structured by both problems without violating their fiduciary responsibilities to their child.

Ramsey's position against nontherapeutic research is akin to his worries about the 'principle of

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<sup>102</sup> Note that this is a slightly different standard than that which would be employed in determining whether to pursue medical treatment. In that situation, one might weigh the medical benefits against the *harms* of treatment—rather than the *risks*.

<sup>103</sup> Murray, *Worth*, 92.

<sup>104</sup> The risks of such ingesting are transparent for those who receive placebos.

totality' that was being advanced to defend organ donation. On that view, the "good of the donor's total being...warrants the sacrifice of a physical part."<sup>105</sup> Ramsey resisted such an account, arguing that "psychological wholeness is deeply imbedded in the physical life and in the security of the fortress of the body."<sup>106</sup> Ramsey had similar worries about how children might be coerced into donating their kidneys to their siblings: at some point, he thought, one "has to stand against the self-mutilating pressures of a medical ethos that holds out great benefit to come to the ill twin child."<sup>107</sup> Yet Ramsey's prohibition on such procedures seems to be animated by his anxieties about their abuse, and by his concerns to preserve a robust account of bodily integrity he thought was everywhere threatened. Yet when those are not at stake, Ramsey's account has much more latitude. He suggests, for instance, that it is appropriate to weigh the hazards to which a child might be exposed when they are "properly a subject under research in *diagnostic* or therapeutic investigations..."<sup>108</sup> As he notes in a footnote, a "young child might be well mature enough to consent to a controlled toothpaste test, or to a program of physical exercise whose results are to be studied."<sup>109</sup>

The research, then, that Ramsey unequivocally opposed would have a disparity between the *moral* or *psychological* benefits for the child, and any medical or physical risks which are structurally tied to the research. In such cases, one imposes a risk to the child's participation in the good of life without any corresponding or proportionate benefits for the health of the child. Such a move for Ramsey violates parenthood, which is constituted by the responsibility to care for a child's life *while* cultivating their sense of responsibility to others. For Ramsey, both these tasks are necessary—but they are also incommensurable. One cannot trade them off against each other, such that the benefits or goods of cultivating a child's sense of moral responsibility sanctions exposing them to risks that are directly tied to their bodily health, within a context where they are of interest only for the sake of their bodily functioning.

Broadening the scope of 'therapeutic' research to include that which has moral or psychological benefits for a child softens Ramsey's position a little—but it doubtlessly remains more restrictive than most contemporary theorists, and the theorists of Ramsey's own day, wish(ed). Still, if Ramsey's view is more restricted than our contemporary intuitions might allow, we are left with the

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<sup>105</sup> Ramsey, *Patient*, 169.

<sup>106</sup> *Ibid.*, 174.

<sup>107</sup> *Ibid.*, 175.

<sup>108</sup> *Ibid.*, 20.

<sup>109</sup> *Ibid.*, 21.

force of Ramsey's objection to the whole scheme: why not say so much the worse for our intuitions? Ramsey could not stem the tide of the 'atomistic individualism' that he decried, and its corresponding dissolution of parenthood and other moral bonds. But his decision to tactically employ the language of 'consent' as a rearguard action in buttressing up such relationships is not, itself, evidence that his framework had insufficient resources to ward off the corrosive effects of liberalism. Ramsey was unafraid to take stands that contemporary readers have found unintelligible—and his rejection of nontherapeutic research with children is perhaps the most prominent of them.