
Challenges raised by modern genetics:
1) Control and rights over the genome
2) Medical uses of genomic information.
3) Use of genomic information in reproduction.

Claim (441): Each of these areas raises characteristic issues, but this paper focuses only on those raised in the third area of concern.

II. TECHNOLOGY AND REPRODUCTION: THE CONTROVERSY

Sources of controversy:
1. Historical abuses of genetics. (Involuntary sterilizations in US, Nazi Eugenics)
2. Relation to other controversies: status of women, prenatal life, disability rights.
3. Permissibility of trait selection. [Commodification, child well-being.]

Three Different Stances:
(1) Strict Traditionalism, (2) Modern traditionalism, (3) Radical Liberty.

A: Strict Traditionalism. (Kass, Cloning & Human Dignity Report of Pres. Council) Tradition and traditional pejorative moral/emotional attitudes (repugnance and disgust) are a fully sufficient reason for prohibition of activities or uses of technology that are regarded to be repugnant.

Offspring are “gifts” not products, cloning is wrong because the cloned child “would be the first human being whose entire genetic makeup is selected in advance.” (Kass)

Kass: “In short, the right to decide ‘whether to bear or beget a child’ does not include a right to have a child by whatever means. Nor can this right be said to imply a corollary—the right to decide what kind of child one is going to have.” (quoted p. 443)

Problems with this view as a guide to public policy:
1) Based in a religious metaphysical view about how reproduction should occur.
2) Breadth: would condemn most forms of technological assistance in reproduction.
3) Conflicts with “the natural instinct of parents to have healthy children for their own sake and that of the children” and “admits no nuance in assessing possible benefits of reproductive technology” (444)

B. Radical Liberty. “Holds that individuals are free to use any reproductive technique they wish for whatever reason, and no limits can appropriately be placed on what they do before the birth of a child.”

Justification: general libertarian principles, freedom w/o government interference.
Robertson claims that advocates of radical liberty in this sense are few: The Raelians, Randolph Wicker, some others. Lee Silver maybe?

Problems with Radical Liberty Approach: Denies the validity of the harm principle—“personal liberty is justifiably limited when it causes direct harm to others.” (Compare with Mill—not quite the same.)
C. Modern Traditionalism. “Midway between” the other views. Reproductive choice “is a basic freedom, including the use of genetic and reproductive technologies that are helpful in having healthy, biologically related offspring.” (446)

Modern in acceptance of new technologies, traditional in demanding that these techniques serve traditional reproductive goals of having biologically related offspring.

Problem for this view: To give a persuasive account why some uses of ART are acceptable but others are not. Key terms to analyze: “Reproductive” and “Harm.”

III. WHAT IS PROCREATIVE LIBERTY

“Procreative liberty is best understood as a liberty or claim right to decide whether or not to reproduce.” (447) It includes liberty to have and to avoid having offspring.

“The liberty to avoid having offspring includes the freedom to act to avoid the birth of biologic (genetically related) offspring, such as avoiding intercourse, using contraceptives, refusing the transfer of embryos to the uterus, discarding embryos, terminating pregnancies, and being sterilized. In contrast, the liberty or freedom to have offspring involves the freedom to take steps or make choices that result in the birth of biologic offspring, such as having intercourse, providing gametes for artificial or in vitro conception, placing embryos in the uterus, preserving gametes or embryos for later use, and avoiding the use of contraception, abortion, or sterilization.” (447)

Comments:
1. Exercise of this right is optional.
2. Primarily a negative claim right against interference by state or others, not a positive right to have the state provide resources.
3. Recognizing PL as a right does not mean that it is absolute—it may be limited, but the burden is on opponents to show that there is a good case for limitation.
4. Rights can be inalienable (non-transferable) without being absolute.
5. There is a legitimate question concerning the scope of this right. (Does not necessarily include a right to clone when fertile, does not necessarily include uses that do not advance the interests of the child (intentional diminishment of capacities.) Why? These uses “would not serve the values that make having offspring of such key importance to persons.” (447) (Is this a questionable reason? Don’t people have different reasons for regarding offspring as important, some of which may be bad or silly reasons?)

“The more closely an application of genetic or reproductive technology serves the basic reproductive project of haploid gene transmission—or its avoidance—and the rearing experiences that usually follow, the more likely it is to fall within a coherent conception of procreative liberty deserving special protection. At a certain point, however, answers to questions about the scope or outer limits of procreative liberty will depend upon socially constitutive choices of whether reprogenetic procedures are viewed as plausible ways to help individuals and couples transmit genes to and rear a new generation.” (450)

A. WHY PROCREATIVE LIBERTY IS VALUED

Connected with common ideas of personal flourishing. (450)
Prized value of healthy offspring. (450)
May have biological source (451)

“…reproduction is an experience full of meaning and importance for the identity of an individual and her physical and social flourishing because it produces a new individual from her haploid chromosomes. (450) If desired and frustrated, one loses the ‘defense “gainst Time’s scythe’ that ‘increase’ or replication of one’s haploid genome provides, as well as the physical and social experiences of gestation, childrearing, and parenting of one’s offspring.” (450)

B. IS PROCREATIVE LIBERTY CONSTITUTIONALLY PROTECTED?

Griswold v. CT (1965) (right of married people to have/use contraception)  
Eisenstadt v. Baird (1972) (extended contraceptive rights to unmarried people)  
Roe v. Wade (1973) (Right to have and to provide abortion services)  
Casey v. Planned Parenthood (1992) (Permitted limited regulation of abortion rights)

Upshot: Court “has established a Fourteenth Amendment fundamental liberty right to avoid conception when having sex, and if pregnancy has occurred, the right to terminate the pregnancy up until viability.” (452)

Liberty to reproduce: Has been less consistently upheld. Ex:

1) Fornication & adultery laws in some states.
2) Buck v. Bell (1927) (but Skinner v. OK (1943) recognized reproduction as a basic civil right that cannot be removed by sterilization, “at least if not done equally.”)
3) Bragdon v. Abbot (1998) upheld reproductive rights for HIV positive persons

Claim: The courts “have not provided guidance on how far the explicit protection of decisions to avoid reproduction and the implicit protection of decisions to engage in coital reproduction takes us in resolving conflicts over assisted reproductive and genetic technologies. One could reasonably view the court’s decisions as having established a broad principle of negative reproductive freedom, both to avoid reproduction and to engage in it without state interference, at least until those who would restrict that freedom have shown that important interests would be harmed by the choice in question.” (453)

Controversial Contexts for the Application of this Right:

- Right not to transfer embryos or gametes
- Selective abortion
- Abortion to get tissue for transplant
- Embryo, and fetal genetic screening
- Non-coital means of conception
- Egg Donation
- Gestational surrogacy
- Reproductive/Therapeutic cloning
- Genetic alteration of prospective children

IV. PROCREATIVE LIBERTY AND GENETIC APPLICATIONS

Four Applications:

1) Screening prospective offspring for late-onset medical conditions.
2) Screening for gender/other non-medical traits—selective negative selection.
3) Reproductive cloning
4) Positive genetic alteration of offspring genomes.
A. MEDICAL SCREENING OF PROSPECTIVE OFFSPRING

**Claim:** There are many relevant concerns about this application of genetic technology, but they are not sufficient to limit use of screening for disease or susceptibility conditions.

**Impact on Prenatal Life:** Robertson argues that concerns about prenatal life largely track people’s positions on abortion and the status of the embryo.

**Impact on Disabled and Dispreferred:** “Society can demonstrate respect and concern for persons with congenital disabilities, for example, by protecting them against discrimination in public accommodations and the workplace without also depriving other persons of the means to avoid having children with those conditions.” (458)

**Impact on Offspring:** Will not harm them, argues R, since “in most instances the child would not have been born if the technique in question had not been used.” (458)

**Private Eugenics:** It was the involuntariness of eugenics programs that made them repugnant, so as long as these are free choices the problem does not arise. (458)

**Selection Itself:** Strict traditionists see this as “violating the duty to accept unconditionally whatever child the “gift” of reproduction brings.” (459) The modern traditionist view sees this as acceptable provided that the goals pursued are otherwise justified.

**SUMMARY:** Absent moral/legal status for pre-viable fetuses, “legal prohibitions on genetic screening of the health of prospective offspring would appear to be an unjustified violation of an individual’s procreative liberty.” (460)

B. NON MEDICAL SELECTION: GENDER, PERFECT PITCH, SEXUAL ORIENTATION

(Notes different attitudes re embryo screening v. screening in utero.)

1. Non-medical Gender Selection

**Problem:** Sexist reasons for selection.

**Claim:** “Under the scheme of procreative liberty developed here, bans on gender selection of the first child may not be acceptable, despite the prejudice that they may evince toward women. As the discussion of homosexuality and musical pitch shows, allowing private prejudice is characteristic of individual freedom in the private sphere and may be recognized without causing public discrimination.” (462)

A ban might mitigate the charge of sexist practice, and the prohibition would be “more tolerable if the parents could choose the gender of the second child.” (462)

2. Selecting for Perfect Pitch

- The preference is understandable, if odd.
- If so, (and if embryos are too rudimentary in development to have inherent rights or interests) then “no moral duty is violated by creating and destroying them.” (465)
- R argues that such selection is consistent with respect for the resulting child.

(Interestingly, Robertson suggests (466) that physicians might deny this service if they suspect that parents are likely to be “over-invested” in the child. What right has the physician to do this?)

-Societal Impact? Impact on deselected groups? Minimal, because lacking Perfect Pitch has no stigma. Oddly, Robertson also claims (466) that “it is highly unlikely that many traits would be controlled by genes that could be easily tested in embryos.” Is he right about this?
Claim: “The modern traditionalist would find a plausible case, and perhaps even a right of procreative liberty, to make such a selection.” (466)

3. Sexual Orientation  Prejudice? “It is true that [parents who select using such a trait] may be exercising a bias or prejudice against homosexuality (or against heterosexuality by homosexuals who seek a gay child), but freedom of association permits persons in the private sphere to discriminate as they choose. (467)

C. REPRODUCTIVE CLONING (468)

On the early stage of the science: “…the best case for human cloning is quite limited and would not appear in itself to justify the great amount of embryo research, miscarriages, and possible early deaths from human cloning.” (468-9)

On Kass’s claim that cloning involves excessive risks to the prospective child. (470)

“The most plausible demand for reproductive cloning is likely to be from people who are at high risk of having offspring with severe genetic disease or who cannot themselves reproduce sexually, for example azospermic males for whom intracytoplasmic insertion of sperm, a standard treatment for male infertility, is the only possible solution.” (470-71)

“A modern traditionalist would have more difficulty accepting reproductive cloning by persons who are sexually fertile.” (471) (Not associated with the same fundamental interests. MT may permit regulation were reproductive liberty is not at stake.)

“If the formidable scientific and medical obstacles to safe cloning are overcome, the key ethical inquiry will be whether an individual’s choice of reproductive cloning serves important reproductive interests without causing harm to others.” (473)

D. REWRITING THE GENETIC CODE OF OFFSPRING (473)

Robertson notes that this may be technologically remote, but merits present discussion since we’ve done these things with other species.

The “key issue” for the modern traditionalist “is whether positive alteration does serve important reproductive goals.” (474)

1. Therapeutic Alterations. Plausible case.

On harm to the child: “When there is a reasonable basis for thinking that actual harm will be minimal, and the parents are committed to rearing and loving the resulting child, proceeding with the first embryo transfers would be ethically justified. The child will not have been harmed if it has no other way to be born healthy.” (477)

2. Non-therapeutic Alteration—Enhancement

First: experimenting on the un-conceived: “…some persons would argue that any experimental embryo transfer is unethical, because the future child is not available to give consent to the research. That child,
however, does not exist at the time of the transfer and would only come into being if the transfer occurred. (…) If the subject of research is not able to consent, but its interests are protected or advanced, then the research may still ethically proceed.” (478)

“A key problem for the modern traditionalist is to justify the moral difference or lack thereof between pre-birth and post-birth enhancement.” (478)

Second: What is the status of non-medical selection traits, and what is the nature (and weight) of the interest served by permitting/denying such selection?

3. Intentional Diminishment: Ex: Blade Runner, Deafness, Achondroplasia

Claims: Hard to show that intentional diminishment “falls within procreative or family liberty.” So concerns about the child provide strong reasons for regulation.

“The right to diminish offspring is simply not coherent as an expression of procreative or familial liberty, for it does not seek to produce healthy offspring who themselves will be fit to reproduce.” (480)

V. POLICY MAKING FOR REPROGENICS

Two Kinds of Issues:
1) Safety and reliability of reproductive and genetic services.
2) Strict Traditionalist complaints about ‘designer children.’

Need to note: (1) Regulatory system that affects provision of these services, and (2) general hands-off approach Gov’t has taken toward medical services.

VI. CONCLUSION: “Modern traditionalism strongly supports a liberty claim-right to use genetic knowledge and techniques to have healthy offspring to nurture and rear. Genetic techniques that directly aim to serve those goals are ethically acceptable and should be legally available, for their use fits neatly into traditional understandings of why reproduction is valued.” (484)

APPENDIX: HARM TO THOSE WHO WOULD NOT OTHERWISE BE BORN

Robertson argues that there can be no harm as long as the child’s life is better than nonexistence. He seems also to think that non-existence is a significant disadvantage.