

Reading SAL Reproduction (November 3)

Robertson (1994): The Presumptive Primacy of Procreative Liberty

A libertarian lawyer takes a 'rights' perspective on procreative liberty—the freedom to have (or avoid having) children.

Procreative liberty is an individual interest, and refers to genetic or gestational reproduction. (Rearing the child doesn't count as procreation, although it's a nice thing to do.) It enjoys presumptive primacy, which means that the burden of justification rests on people who attempt to limit it. We need to be clear about it in order to prevent government intrusion into this important area.

The freedom to have children and the freedom to avoid having children are importantly different.

I: Avoiding reproduction

--access to some contraceptives is limited to minors and the poor, which raises issues of justice.

--different means of avoiding reproduction may implicate the legal and ethical status of "early prenatal stages of human life" (p. 602).

--does IVF raise additional problems? For instance, donation of 'extra' embryos: is my 'reproductive liberty' imperiled if I become a parent without my permission?

We need to balance my reproductive liberty with respect for preimplantation stages of human life.

--should we limit reproductive freedom by requiring 'good reason' for abortions? Ie—Tay Sachs, versus sex selection or eye color?

2: Legal status:

--There is no constitutional positive right to contraception or abortion. But there is a constitutional NEGATIVE right: no one can forbid it. (Cf. *Griswold v. Connecticut*.)

--Both men and women "own" their gametes.

--Extra corporeal embryos cannot be implanted without permission (of both parents, typically).

--Abortion is widely permitted (but states can put various conditions on it: 24-hour waiting periods, parental permission requirements, refusals to fund it).

3. Freedom to procreate:

--requires capacity (so severely retarded people, although they retain their right to bodily integrity, can have limits on their right to procreate).

--Other than that there's been very few restrictions on coital reproduction in the US since the era of eugenics [which, unfortunately, lasted until about 1970.]

--Non-coital reproduction is more controversial;

Donors and surrogates are viewed as having some interests and rights, but limited ones.

The recipients have strong reproductive interests, which may be problematic with some technologies: ie, time-shifting of embryos implanted at different times may complicate inheritance questions.

Technical innovations in reproduction justify 'quality control' techniques—like genetic screening or selective abortion or fetal surgery or genetic engineering—but not non-therapeutic enhancement, cloning or production of fetuses or embryos for non-reproductive uses.

4. There may be ethical issues that are not associated with reproductive liberty, though:

reprotech may reduce the number of already-existent children who are adopted or fostered;

there is a risk of coercive deals being offered to poor women;

commodification of children and reproductive collaborators;

objectification of women, and undermining of the nuclear family; and

"undermining the deep community interest in having a clear social framework to define boundaries of family, sexuality and reproduction." (p. 607)

As you can see, this is tricky territory; but JR's conclusion is that reproductive freedom/liberty is so important that it should have a wide latitude of permissibility. He thinks it important to distinguish between harms to individuals versus harms to personal conceptions of morality or right order. People take precedence over symbolic meanings.

Vatican (1987): Instruction on Respect for Human Life in its Origin and on the Dignity of Procreation

Morality: the defense and promotion of man: his primary and fundamental right to life, his dignity as a besouled body with a special relation to God.

Natural law: the rational order by which man is called to regulate his behavior, according to his unique body/spirit nature.

Not every action possible is permissible. So we need to rationally reflect upon the moral evaluation of technological interventions.

1. Respect for human embryos: The person begins with fertilization: the beginning of a life independent of either of the parents. (p. 611)
So procured abortion is right out, because of the ‘inviolable right of every innocent human being to life.’
Medical research on embryos is also illicit if it involves risk to life or physical integrity, and experimentation is allowed only if therapeutic.
This applies to embryos obtained by in vitro fertilization as well. Gestation of humans by animals or by artificial wombs is forbidden, as is any attempt to obtain a human being without any connection to sexuality. “Every person has the right to be conceived and to be born within marriage and from marriage.” (612)
2. For this reason insemination by donor sperm (AID) is not acceptable: it is contrary to the unity of marriage. As is surrogate motherhood.
3. Insemination by husband sperm (AIH) is not the best way to produce children because it establishes the domination of technology over the origin and destiny of the human person, which sucks; it can be tolerated as a supplement (but not a substitute) for the conjugal act, if infertility is a problem.
4. But hey—if it fails, infertility is not the worst thing that can happen to people. Adoption or other ways to serve are a consolation.

Murray (2002): What are Families For?

(This article is written with reference to the Molly Nash story on pp. 704-6 of our readings for this week. One way of asking an ethical question about the decision in that case would be to question whether the child was being treated as an end in herself, or only as a means. Murray calls into question that way of framing the question.)

There are several problems with “procreative liberty” arguments. They do not take into consideration the interests of the children created. They permit adults to use virtually any reproductive means for virtually any reproductive ends. And by focusing on choice and control, they ignore values that are much more central to family life.

The value central to PL arguments is choice: a value that makes sense in the question of whether to have a child or not (the decision about abortion, for instance)—but makes less sense when transposed to the question of what kind of a child—issues that are more central to commercialization of reproduction, control over the traits of our children, and possible reproductive cloning.

If we concentrated upon the values that are important to family life and conceptions of what constitutes the basis for human flourishing, the entire debate about pro-life or pro-choice would not be framed the way it is currently, and our society would not be so divided over this issue. And we could frame the Nash’s choice in a way that related their options to one central value, instead of couching the issue in terms of two competing and mutually exclusive alternatives.

Cohen (2001): The Market for a Yale Woman’s Eggs

Many university newspapers carry ads for ovum donation, often specifying their criteria in looks and accomplishments and offering large amounts to donors. This article describes the experience of one young woman who looked into the question (and tells curious candidates more than they may want to know about the process involved).

Steinbock (2004): Payment for Egg Donation

What's wrong with egg donation? It is to some extent risky / stressful for the donor; it is of advantage to women who cannot otherwise bear children, and thus an activity as defensible as organ donation as an 'altruistic' gift of life. Steinbock argues that if the practice is justifiable (which, admittedly, not everyone agrees to be the case), then the question of compensation for the risk and discomfort involved should not be ethically problematic. She explores whether the threat of 'commodification' is itself enough to disqualify the practice, and whether it could count as 'exploitation.'

Kass (2001): Preventing a brave new world: Why we should ban cloning NOW

[Kass is the head of the current bioethics commission, and a model for how to write good persuasive polemical prose. His position is opposed to Brock, or Caplan, or NBAC.]

I: The new genetic technologies threaten to open humanity for wholesale re-design, leading to a post-human future. It's not dangerous governments or mad dictators that will lead us there: the technological imperative, liberal democracy, moral pluralism and free markets will suffice. The future of humanity is at stake. And it's not just cloning: germline genetic manipulation ["genetic engineering"] is an equal danger.

II: Description of the production of Dolly. Recognition of the fact that the current Fertility Industry can easily add one more option to their already lengthy list of possible services [to the wealthy infertile]. A list of repugnant possibilities / abuses of cloning and associated technologies. He describes cloning as a defilement of our procreative nature, as well as a form of child abuse.

III: Four [five?] reasons to forbid it:

a—it is unethical human experimentation. It runs a high risk (empirically confirmed) of producing 'unhealthy, abnormal and malformed children'—and what then? Just slaughter them, like deformed sheep?

b—it would create serious issues of identity and individuality, confusing trans-generational relations and heightening the danger of parental expectations stifling the young.

c—it is manufacturing human beings. Human children are demoted to the status of artifacts—creations of a much much lesser 'god'—human science.

d—adding to the degradation of manufacture is the degradation of commodification/commerce. We would be buying and selling nascent human life.

e—it will enshrine and aggravate a profound misunderstanding of the parent/child relationship, and lay the child open to fulfilling the parents' expectations, rather than living h/h own life. Cloning is despotic.

IV: The perils of freedom: the friends of cloning use the language of freedom to justify cloning: the freedom of individuals to reproduce as they wish, the freedom of scientists and inventors; the freedom of entrepreneurs. We already practice early forms of unnatural, artificial and extra-marital reproduction and eugenic choice—so cloning is no big deal. But the rhetoric of freedom is how they will persuade people to adopt their eugenic program.

V: Whether they share my reasoning, most people share my conclusion: that cloning is unethical in itself and dangerous in its consequences and in the precedent it sets. For whatever reason you have: if you agree with the conclusion, what should we do next?

The answer: make cloning illegal—a global ban if possible, and certainly a unilateral one. The distinction that some wish to draw between therapeutic cloning and research cloning is misleading and dangerous, for if the one is allowed to develop the other will quickly follow. Indeed, to prevent it from following involves us in further inhumane behaviors. Cloning for research is itself immoral—to create human life only to experiment upon it—and to allow it only on the condition that the results not be allowed to develop is to add murder to atrocity. The only solution is to not start down this path at all.

VI: The advantages some claim for cloning can be achieved other ways: by use of adult human stem cells, for instance, that don't require embryo experimentation. Once embryonic clones are produced in the laboratories the eugenic revolution will have begun.

A society in which cloning is tolerated is no longer the same society. We must choose NOW between being victims of unregulated innovation, and ultimately its slaves—or free human beings who enhance human dignity.

President's Council on Bioethics: Cloning-to-Produce-Children

A: Ethics of human experimentation

In order to clone human beings for reproduction, we'd need to experiment on human beings—donor, birthmother and child to be. There are three documents governing human experimentation: the Nuremberg Code, the Helsinki Declaration and our own sweet Belmont report. Cloning human beings would affront the spirit of all these documents, in several respects.

1. Safety: current procedures represent threats to the safety of (a) the child: Few live; and those that do have fatal complications of reduced quality of life. There are serious health risks and mutations. (b): the egg donor and birth mother: Superovulation, spontaneous abortion and late-term failures of pregnancy. But even if it becomes safer, it is still experimentation involving a vulnerable population, unable to offer consent—thus unethical experimentation on the unborn. There is no *ethical* way to try to discover whether cloning can ever become safe, now or in the future.
2. Consent: the problem of consent is particularly problematic for the unborn. Bringing someone into existence does not justify maiming or harming that individual.
3. Because women are the only source of human oocytes, and many hundred per successful experimentation are required, research on reproductive cloning could impose disproportionate burdens on women, with low-income women being particularly vulnerable to economic coercion.

The dangers we indicate are not temporary safety problems, but intrinsic moral contradictions that preclude attempting to develop the necessary techniques.

B: Ethics of social experimentation:

Moving away from safety, we should consider that reproductive cloning is not only a biological experiment, but also an experiment in human procreation, an experiment in human identity, an experiment in genetic choice and design, an experiment in family and social life, and a social experiment. So let us consider the deeper meaning of human procreation and childrearing:

Born children are gifts and blessings—not a product of our wills.

Born children are their parent's equals in dignity and humanity

Born children are unique, while at the same time in a network of relation and identity,

including social identity.

C: Psychological and emotional implications:

What would be the psychological and emotional state of children produced by cloning?

1. Problems of identity and individuality: a clone's perception of the 'precedent life' limits sense of self and independence.
2. manufacture: the children would be made to order by their producers or progenitors—brought into being in accordance with a pre-set pattern or design. The question implicated is not just whether to have a child—but what kind of child to have.
3. a new eugenics: reproductive cloning raises the prospects of genetic enhancement to improve the genetic constitution of one's descendents. Even if it is not a government sponsored eugenics, like some of its historical antecedents, it could still prove dangerous to our humanity. We currently have (via prenatal diagnosis and abortion for genetic anomalies or pre-implantation diagnosis) forms of negative eugenics. Positive eugenics would not return individuals to 'natural' health—but to alter humanity based on subjective or arbitrary ideas of excellence. But that would mean abandoning the standard by which to judge the goodness or wisdom of particular aims. It's uncharted waters.
4. Troubled family relations: even with all the various complications in family life as it is now, cloning would make it even worse.
5. Effects on society: cloning affects not only direct participants, but the entire society—which insofar as it accepts cloning, may be said to engage in it, an accomplice in it. We need to ask what forms of bringing children into the world we want to encourage, and what relations between generations we wish to preserve. It objectifies children, viewing them as projects we can control.

Cloning is but one of the various ways we are about to be able to intervene in the human genetic endowment. The 'precautionary principle' should guide us here. Finally, it is unjust to the child; for

the imposition of the chromosomes of someone else, for the deprivation of natural parents, and for subjecting the child to all the risks we have outlined. We conclude it is not only unsafe but morally unacceptable.

Steinbock: Reproductive Cloning: Another Look (2006)

Somatic cell nuclear transfer (SCNT) is the process by which Dolly was created.

In 1997 NBAC recommended continuing the moratorium on reproductive cloning. They adduced safety considerations, not mentioning the issues of human individuality and dignity, commodification or opportunity for genetic enhancement.

Almost everyone agrees that reproductive cloning is a bad thing, but many folks against reproductive cloning are in favor of ‘therapeutic’ cloning—a position that is offensive to those who regard the human embryo as having the same status as a born human.

Steinbock wants to argue that none of the arguments against reproductive cloning are particularly persuasive.

1. The safety arguments are the same for human cloning and animal cloning: that is, the risks that have surfaced in the animals that have been cloned have not been excluded as risks for human cloning. Those dangers—premature aging, large offspring syndrome, possible problems in genetic imprinting and re-programming—seem to affect 23% of cloned animals—a higher rate of birth defects than in normal reproduction. The safety arguments are contingent, of course; if the procedures improve, their safety might well improve as well. At the moment we do not know if human cloning is possible; and if possible, we have no evidence about whether it would be safe.
2. Other arguments than the safety argument are diverse. Some of them are easily dismissed: the claim that we are ‘playing god’ with cloning applies to any technology that changes outcomes, and many of those have already been completely accepted. There is no reason to expect that the individuality of a cloned child is threatened. There is certainly no reason that there would be large numbers of ‘identical’ individuals, since reproductive cloning would be on the initiative of eg infertile couples who wished a genetically related child, and that is hardly a situation that conduces to mass production.
3. Some of the assumptions about “planned” children that are a parental project rather than individuals in their own right, depends upon a fallacy of genetic determinism.
4. Human dignity is threatened by our choices about how to treat our fellow human beings and fellow animals and environment—not by any causal analysis of their points or nature of origin.

None of the non-safety moral arguments against cloning is terribly persuasive. Either they are premised on the fallacy of genetic determinism, or directed against some morally suspect reasons for wanting to clone children. For the acceptable reason of cloning—to get a genetically related child—it’s hard to see why cloning is more morally suspect than other ART. Parents who use children as means for their own ends are blameworthy no matter what the nature of the origin of the child. Safety reasons remain important considerations; but they do not constitute grounds for a permanent and absolute ban on reproductive cloning.