

The Freedom to Procreate



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QUB

A right?



- Is there a right to have children? What – if there is such a right - is its justification? And what are its limits?
- Two distinctions:
- There may be no right to Φ but costs of preventing individuals from doing/having Φ may be unconscionable
- *Negative* freedom not to be prevented from doing/having Φ versus *positive* freedom to assistance in having/doing Φ

As many children.....



- The freedom to procreate cannot be a freedom to create as many children as one might choose to do.
- Interest in having a child has a weight that having multiple offspring does not.
- There are countervailing reasons of ever increasing strength not to permit unlimited procreation.
- Welfare of children
- Population size, especially in a context of scarce resources

Grounds of freedom to procreate



- Good that some humans procreate (future of humanity) v. good that each procreates
- Having children: creation of persons v custodial guardianship of children
- Grounds:
- *Creative*: but procreation is merely the transmission across generations of genes inherited from one's own procreators. Moreover, the activity of parenting is, by contrast, much more plausibly viewed as creative since it is the moulding of a child's identity throughout its minority.
- *'Continuing the blood line'*: but it is unclear what is valuable to the one who procreates, rather than to others, in simply bringing it about that one set of genes are passed to the next generation.
- *Basic desire* to have children that it is impossible to resist: yet such a desire may have critical social determinants, comprise several impulses some of which can be satisfied in non-reproductive ways, and the idea that it is good or indeed obligatory to satisfy any felt desire is morally contentious.

Costs of limiting procreation



- Classic American case, *Skinner v. Oklahoma* (*Skinner* (1942)), found a State law allowing for the involuntary sterilisation of criminals to be unconstitutional.
- Sterilization is the *permanent* deprivation of a basic individual liberty.
- By contrast, we might think it permissible only to deny an individual the right to exercise that liberty on some occasions or in some circumstances, and to seek to do so by means (such as economic and other penalties) that do not entail an irreversible loss of a capacity.
- Improperly discriminatory eugenic functions of sterilisation when it is performed in the service of eliminating a racial group or some putative characteristics of a race.
- Again, denial to one individual of a right to procreate need not have these moral costs.

Reasons to be skeptical about right to procreate



- Not clear that there is a genuine universal interest in doing so. The putative interest of humanity in continuing does not straightforwardly deliver an interest of each human in procreating;
- There are many possibly bad reasons to procreate: to continue a failing marriage; to spite another; to honour one's own parents; to prove it can be one; to secure love and support from others.
- Procreation is the creation of another human being who is vulnerable, dependent, and exposed to the 'precariousness of existence'. It should not be taken lightly – and arguably is at best a severely constrained right.

Orthodox view of wrongness of procreation



- (A) First, the principle that someone is wronged only if harmed. Call this the *wronging as harming condition*.
- (B) Second, a comparative construal of harm such that someone is harmed if and only if he or she is (unjustifiably) made worse off by an act or omission. The baseline by which the comparison of worse off is made is either temporal – before the putatively harmful act or omission – or counterfactual - what would have been the case had there been no act or omission. Call this the *comparative definition of harm*.
- (C) Third, a characterisation of the choice or choices open to the prospective procreator. This can be either one between two options – procreating or not procreating - or between three options – procreating in these or in other circumstances, or not procreating. Call these the two- and three-option choices.
- (D) Fourth, the nature of non-existence. This will either be such that non-existence can be compared with existence, or such that it cannot. If a comparison can be made a life is worth living (and thus one that would rationally motivate someone to choose to come into existence) if it is better than non-existence.
- (E) Fifth, the non-identity condition (Derek Parfit) affirms that persons created at different times or in different circumstances by the same pair of procreators are non-identical.
- Conclusion [from (A) (B) (C) (D) and (E)]: *procreators only do wrong if they create an individual whose life is worse than non-existence.*

Is it wrong to create a miserable life?



- A miserable life is one that is just better than non-existence
- If the procreators can only choose between procreating a miserable life and not procreating then the child they choose to create is not wronged since had they not procreated the child would not have existed.
- If the procreators face a three-option choice (C) then given the permissibility just established of choosing the child's existence over non-existence, the only remaining question is whether they do wrong in choosing to procreate this child rather than procreate at a different time or under different circumstances.
- Imagine that doing so would result in a child whose life was significantly better than that of the miserable child. Nevertheless, the non-identity condition ensures that the comparison of lives is that of two distinct individuals.
- It is thus not worse for this miserable child that he or she is procreated now; the happier child who might be procreated is a different one. The miserable child can only exist as a miserable child, and so long as his life is (even if only barely) worth living its procreators do no wrong to him in bringing him into existence.

Responses to orthodox view



- ‘Bite the bullet’: But, given that most moral philosophers think that there should be full reflective equilibrium between any plausible moral theory and the developed intuitions of common-sense morality, and given, further, the significant gap between the two in this case, the bullet-biting response would be considered meta-ethically highly contentious.
- Reject the non-identity condition, and claim that an actual person procreated at t_1 and a hypothetical person who would have been conceived at t_2 by the same two individuals are in fact identical. They are identical under some description such as ‘the second child of this couple’.
- The problem with this response lies in seeing how we might specify the appropriate description that ensures the identity in a way that is neither question-begging nor such as to generate evident counter-examples.

Responses to orthodox view (continued)



- Procreators act wrongly in an impersonal sense, and reject *person-affecting* constraint on any judgment of moral wrongdoing.
- Yet wrong of the wrongful procreation does just consist of what is done to the child.
- Reject the comparative construal of harm. An act or omission can harm a person “noncomparatively”.
- However, in the absence of a baseline (non-existence) it is hard clearly to specify the badness of procreation. How exactly and to what degree does procreation affect the procreated person for good or ill? If the comparison is with other procreated human beings, then it is hostage to historical and social relativities. What would be a non-comparative harmful condition of existence in one society or epoch need not be so in another?

On what it is to create someone: an aside



- There is a morally significant difference between putting an already existent person into a harmed condition (for instance, blinding a child), and bringing it about that a person exists and is thereby in a harmed condition (for instance, creating a child without sight).
- What is morally salient about procreation is that it puts a human being into a condition he or she did not choose to be put into, and which is an uncertain and risky state. It is a 'predicament' (D. Velleman) one in which the person is vulnerable to being harmed as well as open to having goods.
- That procreation is of this character – throwing the other without their consent into the perilous condition of existence – imposes stringent duties on the procreator.
- The scope of those obligations comprises both the kind of life the procreator must create in the first place, and the subsequent quality of life he or she must help to make possible once the child is born.

Responses to orthodox view (continued)



- Spell out the wrongfulness, and wronging of the miserable child other than by means of the causing of harm to the child.
- We may wrong someone by acting in a way that does not make worse and indeed may benefit the other overall
- The wrong in question can variously be construed as the violation of a duty of responsible procreation (Onora O'Neill); the violation of legitimate expectations on the part of the prospective child (R. Kumar); or the violation of a 'birthright' (J. Feinberg and D. Archard)
- The problems of a wrong- or rights-based account of wrongful procreation are at least four-fold.
- First, it is arguably still vulnerable to the non-identity problem. The child who is putatively wronged at being procreated would not complain since the only alternative is her non-existence and not complaining is equivalent to the waiving of the 'birthright'.
- Second, the response proves too much. Consider the case of those procreating in unfortunate parental circumstances who, through no fault of their own (such as extreme poverty in consequence of injustice), cannot but have a child whose life will be miserable.
- Third, inasmuch as we are committed to talk of parental rights to procreate their exercise is straightforwardly inconsistent with the right of a child not to exist, and incoherence thereby threatens.
- Fourth, there is a threshold problem: what exactly is owed to the future child? By comparison with the relatively straightforward comparison of existence with non-existence a rights- or wrong-based account leaves it unclear at what point a future life is so miserable as to make its creation wrongful.