



**Digital Commons@**

Loyola Marymount University  
LMU Loyola Law School

---

Philosophy Faculty Works

Philosophy

---

Spring 2013

## Philosophy and Theology: Reproductive Rights

Christopher Kaczor

*Loyola Marymount University*, [Christopher.Kaczor@lmu.edu](mailto:Christopher.Kaczor@lmu.edu)

Follow this and additional works at: [https://digitalcommons.lmu.edu/phil\\_fac](https://digitalcommons.lmu.edu/phil_fac)



Part of the [Philosophy Commons](#)

---

### Recommended Citation

Christopher Kaczor, "Philosophy and Theology" Reproductive Rights, *National Catholic Bioethics Quarterly* 13.1 (Spring 2013): 197-203.

This Article is brought to you for free and open access by the Philosophy at Digital Commons @ Loyola Marymount University and Loyola Law School. It has been accepted for inclusion in Philosophy Faculty Works by an authorized administrator of Digital Commons@Loyola Marymount University and Loyola Law School. For more information, please contact [digitalcommons@lmu.edu](mailto:digitalcommons@lmu.edu).



## PHILOSOPHY AND THEOLOGY

In common parlance, synonyms for “reproductive rights” include “reproductive autonomy,” “reproductive justice,” or even more euphemistically, “women’s health.” But what exactly are reproductive rights? What are the scope and limits (if any) of reproductive rights? What is the basis for the legal and moral duties that come with reproducing?

### *Rival Definitions of Reproductive Rights*

A fruitful conversation about such questions should begin with a disambiguation of the term reproductive rights. Part of the ambiguity hinges on the adjective “reproductive.” What is the object of reproductive rights? That is, what is the precise claim that advocates of reproductive rights assert? The proposed objects of reproductive rights include but are not limited to the following: access to abortion, contraception, reproductive technologies such as IVF and cloning, as well as the freedom to perform sexual acts of a reproductive kind. Some understand reproductive rights to be the freedom to have genetically-related offspring; others consider it the freedom to rear one’s genetic offspring.<sup>1</sup> Many authors distinguish the liberty to reproduce and the liberty not to reproduce.<sup>2</sup>

As used in political debates, the term “reproductive rights” is a common euphemism for the ability to access abortion and contraception, the liberty *not* to reproduce. But this liberty is no longer possible in the pursuit of an abortion, for abortion involves the termination of the life of a living human being,<sup>3</sup> that is, abortion involves destroying the fruit of completed reproduction. Once a woman is pregnant,

---

<sup>1</sup> For an exploration of some of these issues, see Muireann Quigley, “A Right to Reproduce?” *Bioethics* 24.8 (October 2010): 403–411.

<sup>2</sup> See *Ibid.*, 404.

<sup>3</sup> I argue for this view in Christopher Kaczor, *The Ethics of Abortion: Women’s Rights, Human Life, and the Question of Justice* (New York: Routledge 2011).

reproduction has been accomplished. Abstinence from sexual intercourse, the use of contraception, and not treating infertility can rightly be understood as actions that are not reproductive, but abortion cannot. In any case, the following reflections focus on the liberty to reproduce, not the liberty not to reproduce.

Another part of the ambiguity in speaking about reproductive rights arises from the multiple meanings of the term “rights.” Making use of the work of Wesley Hohfeld, John Finnis distinguishes a liberty right from a claim right.<sup>4</sup> A “liberty right” (also called a privilege right) to X is the proposition that the person in question has no duty not to X. For example, if a person has a right to travel to Tulsa, this means that the person has no legal or ethical duty to refrain from going to Tulsa. In contrast, if an agent has a “claim right,” then *other* agents have a duty to either positively aide or negatively refrain from interfering with a person’s having or doing X. An agent’s right to live is a negative claim right, which means that other people have the duty not to intentionally kill the agent. A child’s right to due care, a positive claim right, means that other people, namely the parents, have a duty to provide the necessities for the child’s well being. Some authors consider reproductive rights to be liberty rights; others consider them to be claim rights.<sup>5</sup>

Reproductive rights clearly cannot be claim rights because reproduction (at least given current technology) involves the gametes of two people, so a single person cannot reproduce without the aid of another person (either in the act of sexual intercourse or through gamete donation). But everyone agrees that no one is morally or legally obligated to become a parent through either forcible intercourse or forcible donation of gametes. Presumably, this negative right of non-reproduction overrides any possible positive claim right of others to help us reproduce. In other words, if some person wanted to reproduce by means of sexual intercourse but could not find a willing partner, then that person wanting to reproduce through sexual intercourse would not have a positive claim right to reproduce.

A final cause of ambiguity is whether the term “reproductive rights” refers to legal rights or moral rights. In the United States, we have the legal right to be rude, uncaring, and cruel in speech to whomever we like, but we have no moral right to such conduct because we have a moral duty to refrain from hateful speech. Similarly, no one should be legally prevented by the force of law from having a child through governmental imposition of involuntary abortion or sterilization. However, there is no inconsistency in also insisting that no person has a moral right to have a child, or even to perform acts from which a child may arise. The disambiguation of the term reproductive rights is merely a first step in the debate, but it is a necessary first step for any meaningful discussion of the key questions arising from an assertion of a right to reproduce.

---

<sup>4</sup> See Wesley Hohfeld, “The Rights and Wrongs of Abortion: A Reply to Judith Thomson,” *Philosophy and Public Affairs* 2.2 (1973): 117–145.

<sup>5</sup> See Hugh LaFollette, “Licensing Parents Revisited,” *Journal of Applied Philosophy* 27.4 (November 2010): 327–343 and Joyce C. Havstad, “Human Reproductive Cloning: A Conflict of Liberties,” *Bioethics* 24.2 (February 2010): 71–77.

*Reproductive Rights and Reproductive Duties*

Much is written about reproductive rights but little is written about reproductive duties. Yet, important conceptual links exist between such rights and corresponding duties. Muireann Quigley, in “A Right to Reproduce?,” considers two justifications for reproductive rights: firstly, that they arise from an agent’s interest in reproducing and secondly, that reproductive rights arise from autonomy.<sup>6</sup> She suggests that both justifications face serious difficulties. Part of the problem in considering reproductive rights in individualistic terms, somewhat articulated by Quigley, is that procreation is inherently *other-regarding* in two ways. First, at least given current technology, it always involves the gametes of two adults. Secondly, even if technology at some point in the future allows one person to reproduce alone through cloning or the creation of gametes so that women could make sperm or men could make eggs, procreation would still be inherently social because procreation by definition brings about the life of someone else, another human person. When looking for justifications and limits to reproductive rights, the inherently social dimension of such liberty is often overlooked. To be a parent always involves a child. Quigley notes that Bonnie Steinbock thinks that the right to reproduce is not unrestricted, but rather limited to those who have an interest and ability raise a child. This is, it seems to me, an absolutely necessary restriction on reproductive liberty understood in a moral sense.

Reproductive rights have to do with becoming a parent, and becoming a parent is necessarily linked to having children and thus accepting the duties that arise from having children. In her article “Parental Obligation,” Nellie Wieland examines rival accounts of what grounds for paternal and maternal duties.<sup>7</sup> One option is that parenting is a chosen substantive life project, but some people clearly count as parents who have not taken up or chosen to discontinue parenting as a life project. I agree with Wieland that such persons still have obligations to their children, so the choice of parenting as a life project cannot justify parental obligations.

A second option defines parenting as mere biological relation. Wieland rejects this option, asserting that mere *biological* relationships have no *moral* content and that a “biologically grounded obligation would also fail to explain the obligations that we readily assume are waived in the case of adoption, sperm and egg donorship, and, possibly, in cases of rape. Although a ‘bare’ biologically grounded obligation would be sweeping in its reach—children would be broadly covered by their biological parents—it fails to demonstrate that there is moral content in biological relation.”<sup>8</sup>

The claim that bare biology is irrelevant to moral content is not a self-evident truth. Perhaps lurking in the background is the “is/ought” fallacy or the fact/value distinction, but these justifications for the claim are themselves highly questionable.<sup>9</sup>

<sup>6</sup> Muireann Quigley, “A Right to Reproduce?,” *Bioethics* 24.8 (2010): 403–411.

<sup>7</sup> Nellie Wieland, “Parental Obligation,” *Utilitas* 23.3 (September 2011): 249–267.

<sup>8</sup> *Ibid.*, 255.

<sup>9</sup> See, for example, Alasdair MacIntyre, *After Virtue: A Study in Moral Philosophy* (Notre Dame, IN: University of Notre Dame Press, 1981), 148–150; Anthony Lisska, *Aquinas’s Theory of Natural Law: An Analytic Reconstruction* (Oxford: Oxford University

That someone is my biological brother or sister, or mother or father, seems highly relevant to how I should treat them in a variety of situations. To treat such a person as a perfect stranger indicates a lack of sensitivity to the familial duties that—though not chosen—are nevertheless real. The precise scope and specifications of these duties is a matter for investigation, but the idea that biological relationships are irrelevant for ethics is—on the face of it—rather absurd. Should we really tell Oedipus Rex that he shouldn't worry a bit about killing his father and marrying his mother since, after all, he has mere biological relationships to them? As for adoption, the obligation to care for children is not waived but rather discharged in securing a family for the adopted child. Sperm donation and egg donation are ethically problematic for a variety of reasons, one being that they deprive the children of the proper relationship to their biological parents. If a child has already been brought into existence, adoption may be the best way to ensure his or her proper care. But to cause a child to come into existence, knowing beforehand that the child will not have a social relationship with his or her biological mother, biological father, or both, is to wrong that child. Finally, in rape, I believe the mother (in the biological and gestational senses of the term) does have obligations not to kill or otherwise intentionally or recklessly harm her biological child. After birth, she may choose to discharge her obligations to the child through placing the child for adoption, or she may choose to become a social mother and raise the child. The case for understanding the duties of parenthood as based in biology is not undermined by Weiland's considerations.

A third option for justifying parental duties is to say that “biological parents, *being causally responsible for the existence of their children*, presumably inherit a moral responsibility to care adequately for their dependent children or to see that they are cared for by others. Generally speaking, parents have basic substantive reasons to give priority to their children's interests, reasons tied almost inextricably to biological relation. These reasons are substantive not because the biological relation in itself gives rise to them but *because parents have brought into the world children who need care*.”<sup>10</sup> This justification fails on Wieland's view, because of “the complexities of reproductive voluntariness, autonomy and control are enough to cast doubt on many, if not most, cases.”<sup>11</sup> I am not convinced this conclusion is correct, in part because, as just stated, many moral obligations do not arise simply because of our own voluntary, autonomous choice to take on the moral obligation.

What does justify parental obligation? On Weiland's view, it is the unique ability of parents to help and harm their own children. He says, “My argument will be relatively simple: (i) parents are in the best position to optimize the well-being of their children; (ii) those same parents are in the best position to cause harm to their children by not attempting to optimize this well-being; and (iii) children are deserving of moral regard. Therefore, (iv) parents have an obligation to care for their

---

Press, 1998); and Hilary Putnam, *The Collapse of the Fact/Value Dichotomy and Other Essays* (Cambridge: Harvard University Press, 2002).

<sup>10</sup> Wieland, “Parental Obligation,” 255, original emphases.

<sup>11</sup> *Ibid.*, 257.

children even when it is costly, involuntary and unrewarding.”<sup>12</sup> Strictly speaking, this argument is a non-sequitur since a logical term in the conclusion (“an obligation to care for their children even when it is costly, involuntary and unrewarding”) does not appear in the premises. However, the conclusion of the argument is an interesting thesis worth considering.

A question for Weiland’s reasoning is who exactly are the “parents” and why? As Robert Sparrow points out, there are numerous senses of the terms “social parents, gestational parents, genetic parents, commissioning parents, causal parents, ‘cytoplasmic’ parents, and mitochondrial parents.”<sup>13</sup> In the future, some children, argues Sparrow, may actually have no genetic parents at all: “I want to suggest that if an ovum derived from one embryonic stem cell line were fertilized using sperm derived from another embryonic stem cell line and if the embryo that resulted was then implanted into a woman’s womb, then any child that was born would have *no* genetic parents! The child would, of course, have a gestational mother and may have social parents (one of whom may be the gestational mother). However, there would be no individuals, living or dead, who would have the appropriate genetic relationship to the child to be described as its genetic parent.”<sup>14</sup> Why not say that the original embryos from whom the gametes were derived are the genetic parents? Sparrow writes,

It is true that these embryos are the only organisms with a genome in the appropriate informational relationship to the genome of the child to stand in the relation of “genetic parent”. However, while they might serve as placeholders in a family tree, embryos cannot play either of the roles, discussed above, that we require of genetic parents. Individuals cannot interpret their lives and experiences in the light of “biographies” of embryos. Institutions cannot assign responsibility for the care of children to embryos or consult embryos about the fate of embryos created with their gametes. More fundamentally, it is internal to the concept of parenthood that parents are *persons*, living or dead, who stand in the appropriate (social, gestational, causal, genetic, etc.) relationship to the child. Thus, I would suggest that to have embryos as genetic “parents” is to have no genetic parents at all. Instead, the children born of such matings might be said to be “orphaned at conception.”<sup>15</sup>

This argument fails. It is true that individuals cannot interpret their lives and experiences in the light of biographies of embryos, but the biographies of anonymous sperm donors or of ova taken from aborted female fetuses are equally unknown. It is true that institutions cannot assign responsibility for the care of children to embryos or consult embryos about the fate of embryos created with their gametes, but this is equally true of children whose fathers died before their birth. Finally, even if it is internal to the concept of parenthood that parents are *persons*, living or dead, who stand in the appropriate (social, gestational, causal, genetic, etc.) relationship to the

---

<sup>12</sup> Ibid., 259.

<sup>13</sup> Robert Sparrow, “Orphaned at Conception: The Uncanny Offspring of Embryos,” *Bioethics* 26.4 (May 2012): 174.

<sup>14</sup> Ibid., 176.

<sup>15</sup> Ibid., 177.

child, Sparrow simply assumes without argument the deeply controversial claim that human embryos cannot be persons. I reject this assumption.<sup>16</sup>

The duties of reproduction are also explored in Mianna Lotz's article, "Rethinking Procreation: Why It Matters Why We Have Children," which imagines three cases of malevolent conception in which people create new people in ways that profoundly disadvantage them:

*Reckless Paula.* While Paula is trying to become pregnant, she learns that, if she conceives a child now, there is a risk that it may have [a certain] handicap. If she waits two months before conceiving a child, there would be no such risk. She decides not to wait. As a result her child, Paul, is handicapped [albeit not to an extent that would make his life not worth living].

*The secretly ambitious lab technician.* A secretly ambitious lab technician is deliberating whether to introduce a certain solution into a dish that contains a single egg and a single sperm cell. The technician is aware that the solution will cause the baby produced by this union of egg and sperm to be born with a serious congenital disorder. However, the important research that the technician is conducting is on the effect that the solution will have on the developing embryo. So, if the technician's hand is stayed by law, morality, or some other force he will simply discard the contents of the dish. Suppose then that he drops the solution into the dish and does not discard the contents of the dish. . . . The embryo is returned to the womb of its genetic mother to develop, and the baby is in fact born with the serious congenital disorder but nonetheless has a life well worth living.

*The malicious scientist.* A malicious scientist employs genetic screening and in vitro fertilization to produce the most diseased, handicapped individual he can possibly produce who will nevertheless have a life just barely worth living—just to enjoy watching the suffering.<sup>17</sup>

Cases of malevolent conception raise interesting philosophical questions. Derek Parfit's non-identity thesis holds that if someone otherwise would not exist, then that person is not harmed (where 'harmed' means made worse off), even in cases of malevolent conception, by being brought into existence.<sup>18</sup> Since such children would not have been at all, they cannot be harmed and so also are not wronged, save if "their life is not worth living." Making the same point, Joyce Havstad quotes Raanan Gillon: "What is preferable for that child? To exist but to have those problems, or not to exist at all?"<sup>19</sup> No harm is done since the child is not made worse off.

In an appeal to the collective interests of the community, Lotz proposes a way to show what is wrong with cases of malevolent conception despite the non-identity thesis, "To manifest an indifference to introducing avoidable suffering into one's community, is to show a lack of respect for the community itself, even if it cannot

---

<sup>16</sup> Kaczor, *Ethics of Abortion*, chapters 5 and 6.

<sup>17</sup> Mianna Lotz, "Rethinking Procreation: Why It Matters Why We Have Children," *Journal of Applied Philosophy* 28.2 (May 2011): 105–106.

<sup>18</sup> The non-identity thesis is also addressed in Havstad, "Human Reproductive Cloning."

<sup>19</sup> *Ibid.*, 74.

be said to be a disrespect shown to a specific, not-yet-existing member of that community. It is a disrespect that offends the community by undermining its regard for itself, and its valuing of itself.”<sup>20</sup> However, this principle may not work to explain the (presumed) wrongness of creating a gravely disadvantaged child, if creating this child serves the good of the community. Ursula Le Guin’s short story, “The Ones Who Walk Away from Omelas” and Lois Lowry’s *The Giver* offer literary depictions of situations in which community well-being is served, rather than undermined, by the suffering of a single child. Presumably, to create a gravely disadvantaged child is still wrong, even if this creation is done for the service of the community. This solution, like appeal to impersonal principles, also fails to focus our moral attention where it should be, on the disadvantaged child, not on the community.

The supposition of the non-identity thesis is that the only way wrong can be done is by harming. But this premise is false. If a woman tries to kill a man but fails to even harm him, she is still guilty of attempted murder, a serious moral and legal wrong, despite no one being harmed. In many cases of drunk driving, no one is harmed, but this too is a serious moral and legal wrong. In cases in which the judge, jury, and both attorneys know that a man is perjuring himself under oath, no one is harmed by being deceived, but a wrong has been done. So we can account for cases in which an agent fails to exercise due care in conceiving a human being by saying that the conceived person has been *wronged*, even if the conceived person has not been *harmed*, in the sense of brought into a worse state than he or she otherwise would have been. The wrong may be similar to the case of attempted murder if a person intentionally seeks to create someone whose well-being is compromised by the circumstances of conception. The wrong may be similar to drunk driving if someone fails to take due care in conceiving another person. The wrong may be similar to perjury insofar as a person does not provide that which can and should be provided to the person conceived.

CHRISTOPHER KACZOR

---

<sup>20</sup> Lotz, “Rethinking Procreation,” 112.