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Philosophy and Theology: Notes on Access to Fertility Treatments

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PHILOSOPHY AND THEOLOGY

How to ethically treat infertility remains a topic of much discussion,¹ and recent work has called attention to the risks to women using IVF and children conceived by it (Tarek A. Gelbaya, “Short- and Long-Term Risks to Women Who Conceive through In Vitro Fertilization,” *Human Fertility*, March 2010). An important report was published in October 2009 by the Ethics Committee of the American Society for Reproductive Medicine (ASRM), titled “Access to Fertility Treatment by Gays, Lesbians, and Unmarried Persons” (*Fertility and Sterility*). The ASRM report addresses the question of whether those working in health care should assist individuals in reproducing regardless of the prospective parents’ marital status or sexual orientation. Among its summary conclusions, the committee asserts that “there is no persuasive evidence that children are harmed or disadvantaged solely by being raised by single parents, unmarried parents, or gay and lesbian parents. . . . Programs should treat all requests for assisted reproduction equally without regard to marital status or sexual orientation.” Not only *may* health care workers assist in the request to reproduce, the ASRM report asserts that they *must* assist: “Although professional autonomy in deciding who to treat is also an important value, we believe that there is an ethical obligation, and in some states a legal duty, to treat all persons equally, regardless of their marital status or sexual orientation.” A similar defense of assisted reproductive treatment for transgender men and women is given by Timothy F. Murphy in “The Ethics of Helping Transgender Men and Women Have Children” (*Perspectives in Biology and Medicine*, Winter 2010).

¹See, for example, Maureen Porter, Valerie Peddie, and Siladitya Bhattacharya, “Debate: Do Upper Age Limits Need to Be Imposed on Women Receiving Assisted Reproduction Treatment?” *Human Fertility* 10.2 (June 2007): 87–92; Anna Smajdor, “Should IVF Guidelines Be Relaxed in the UK?” *Expert Review of Obstetrics and Gynecology* 4.5 (September 2009): 501–508; and Lone Schmidt, “Should Men and Women Be Encouraged to Start Childbearing at a Younger Age?” *Expert Review of Obstetrics and Gynecology* 5.2 (March 2010): 145–148. The abstracts of these articles are included in this issue.

What justifies these conclusions? The ASRM report mentions shifting public standards, such as increasing trends away from reproduction by married opposite-sex couples and a greater acceptance of homosexuality. The committee breaks down the ethical debate into three main points. First, the ASRM holds that unmarried persons as well as gays and lesbians have reproductive interests. Second, the committee believes that the welfare of children is not impeded by their being raised by single persons or same-sex couples. Finally, the report curtails the personal autonomy and conscience rights of health care workers in favor of a “duty not to discriminate on the basis of marital status or sexual orientation.” Each of these points merits further investigation.

The invocation of “societal standards” is remarkably inconsistent throughout the report. For example, general societal acceptance of single parenthood is noted as evidence in favor of helping unmarried individuals reproduce, but majority views of same-sex marriage are ignored as evidence against helping same-sex couples reproduce. In thirty-one states, including left-leaning California, same-sex marriage has been put to a vote of the people, and in all thirty-one states a majority of the people have voted against it. Both voting and polling indicate that society does not in fact view opposite-sex couples and same-sex couples as equivalent. The ASRM committee also provides no evidence whatsoever that “society” approves of treating all requests for assistance in reproduction equally regardless of their marital status or sexual orientation. Polling indicates that society in general disapproves of adoption by same-sex couples, so a fortiori it would probably disapprove of the creation of children by IVF specifically for same-sex couples. Even if evidence of public support were available, however, the views of the majority do not determine what is ethically acceptable, despite the committee’s reliance on them when they fit the conclusions the committee wishes to draw.

The committee asserts that, “given the importance to individuals of having children, there is no sound basis for denying to single persons and gays and lesbians the same rights to reproduce that other individuals enjoy.” Since the state does not criminalize single parenthood or constitutionally ban assisted reproduction by homosexuals or the unmarried, “moral condemnation of homosexuality or single parenthood is not itself an acceptable basis for limiting child rearing or reproduction.”

There is, however, no such thing as a “right to reproduce,” since this would amount to the *right* to have a child. Children—like all human beings—are not property to which other persons can have rights. People do have “parental rights” because they have parental duties—duties that come into existence only with the existence of a child. No one—married or single, heterosexual or homosexual—has the “right” to have a child. It is more accurate to speak of a right of access to fertility care.

Further, it simply does not follow that because a practice is legal, then a health care practitioner cannot use moral condemnation of the practice as a reason not to assist in it. Abortion of a pregnancy in the ninth month simply because the fetus is female is legal in the United States, but even the least generous protection of conscience allows health care workers to decline to perform abortions in this situation. Physician-assisted suicide is legal in Oregon and Washington, but virtually everyone agrees doctors ought not to be forced to help kill their patients. Capital punishment is

constitutionally legal in the United States, but who would force physicians opposed to the death penalty to participate in it? The report's move from the premise of legality to the conclusion of a moral duty to assist is a non sequitur.

Further, the ASRM asserts that “the evidence to date, however, cannot reasonably be interpreted to support such fears” that a child will risk adverse outcomes if not raised by a married mother and father. “Those clinicians who will not treat single females . . . for example, may believe that fertility treatment should be restricted to married couples, that treatment should be for the infertile only, or that children need a father and a ‘normal upbringing.’” No evidence is cited by the committee to support the claim that being raised by a single parent does not endanger the well-being of children. Indeed, the committee ignores vast evidence indicating that children raised by single parents, including those raised by cohabiting parents, are at greater risk for adverse effects with respect to mental health, physical well-being, academic achievement, and emotional health and are at greater risk for incarceration, abuse of drugs and alcohol, and failure to establish lasting relationships as adults. The evidence, summarized in a number of publications, points to the conclusion that raising offspring outside of marriage endangers the well-being of children. *Why Marriage Matters: Twenty-six Conclusions from the Social Sciences* is a report by a group of scholars of the family chaired by W. Bradford Wilcox of the University of Virginia, William Doherty of the University of Minnesota, Norval Glenn of the University of Texas, and Linda Waite of the University of Chicago. *Why Marriage Matters* notes, for example, that children raised by their married biological parents have “better physical health, on average, than do children in other family forms. . . . Parental marriage is associated with a sharply lower risk of infant mortality.”² As other authors have also reported, single and cohabiting parents put the well-being of their children at risk. David Popenoe and Barbara Dafoe Whitehead note that “cohabiting parents break up at a much higher rate than married parents, and the effects of breakup can be devastating and often long lasting. Moreover, children living in cohabiting unions with stepfathers or mothers’ boyfriends are at higher risk of sexual abuse and physical violence, including lethal violence, than are children living with married biological parents.”³ The conclusion that children fare better—physically, socially, legally, educationally, and psychologically—when raised by their married parents is well established in the social sciences.

Given the strong evidence of the disadvantages of children being raised by a single parent (of whatever orientation), let us turn now to another issue raised by the ASRM committee, namely, fertility treatment for gays and lesbians. Do same-sex couples provide the same benefits to children as do opposite-sex couples? We cannot simply assume that because children do better when raised by their married biological parents, they will do equally well when raised by same-sex couples.

²W. Bradford Wilcox et al., *Why Marriage Matters: Twenty-Six Conclusions from the Social Sciences*, 2nd ed. (New York: Institute for American Values, 2005), 11.

³David Popenoe and Barbara Dafoe Whitehead, *Should We Live Together? What Young Adults Need to Know about Cohabitation before Marriage: A Comprehensive Review of Recent Research* (New Brunswick, NJ: National Marriage Project, 2002), 2.

The innate, genetic, biological differences between men and women, and therefore between mothers and fathers, are significant.⁴ Children raised by same-sex couples are always deprived of either a father or a mother. In a fascinating discussion of why it would be wrong to conceive a child in order to place the child for adoption, Bernard Prusak argues that parents have imperfect duties to provide for their own children in ways that only they can (“What Are Parents For?” *Hastings Center Report*, March–April 2010). Prusak provides a framework for coming to the following conclusion: to create children knowing that they will not have the special care of their mother (or father) is to fail in an imperfect obligation to the child.

The ASRM committee also supports the claim that children raised by same-sex couples do not have a higher rate of social or psychological problems. The committee notes the conclusion of an American Psychological Association task force: “Research suggests that sexual identities (including gender identity, gender-role behavior, and sexual orientation) develop in much the same ways among children of lesbian mothers as they do among children of heterosexual parents. . . . Studies of other aspects of personal development (including personality, self-concept, and conduct) similarly reveal few differences between children of lesbian mothers and children of heterosexual parents.”⁵ The ASRM committee notes that the APA task force found fewer data available for the outcomes of children raised by gay men, but it repeats the APA claim that limited evidence shows that gay men are better fathers than straight men.

The evidence is not as unequivocal as the ASRM summary leads one to believe. In the 1997 *University of Illinois Law Review* article, “The Potential Impact of Homosexual Parenting on Children,” Lynn Wardel argues that systemic bias among researchers in favor of liberal social views of homosexuality distorts their research on the issue.⁶ He notes, for example, that the subjects in these studies are often self-selected rather than randomly selected, that control groups sometimes consist of single parents rather than opposite-sex couples, that the sample sizes are too small to be statistically reliable, that the studies rely on retrospective data and self-reporting, and that the research does not control for education, employment, health, and other relevant factors. He also points out that we have few longitudinal studies of the long-term effects of same-sex parenting. Wardel concludes that “‘social desirability’ bias taints the studies of homosexual parenting. Both researchers and respondents perceive that within society, or at least the subgroup of society with which they identify, it is deemed desirable, progressive, and enlightened to support

⁴See, for example, Steven E. Rhoads, *Taking Sex Differences Seriously* (New York: Encounter Books, 2005); Leonard Sax, *Why Gender Matters: What Parents and Teachers Need to Know about the Emerging Science of Sex Differences* (New York: Broadway, 2006); and Anne Moir and David Jessel, *Brain Sex: The Real Difference between Men and Women* (New York: Delta, 1991).

⁵The APA conclusions noted in the ASRM report can be found in the *Resolution on Sexual Orientation, Parents, and Children* adopted by the APA Council of Representatives, July 2004, <http://www.apa.org/about/governance/board/04july-bdminutes.aspx>.

⁶Lynn Wardel, “The Potential Impact of Homosexual Parenting on Children,” *University of Illinois Law Review* (1997): 833–919.

one particular outcome—in this case, that homosexual parenting is just as good as heterosexual parenting. This insight influences the research design and analysis, as well as the data gathered—the responses.”

These flaws in the data are recognized even by self-described “pro-gay” scholars, such as Judith Stacey and Timothy Biblarz, both strong advocates of same-sex marriage and child rearing by same-sex couples. In their 2001 *American Sociological Review* article, “(How) Does the Sexual Orientation of Parents Matter?” they write,

Because researchers lack reliable data on the number and location of lesbian and gay parents with children in the general population, there are no studies of child development based on random, representative samples of such families. Most studies rely on small-scale, snowball and convenience samples drawn primarily from personal and community networks and agencies. Most research to date has been conducted on white lesbian mothers, who are comparatively educated, mature, and reside in relatively progressive urban centers, most often in California or the Northeastern states. . . . Most studies simply rely on a parent’s sexual self-identity at the time of the study, which contributes unwittingly to the racial, ethnic, and class imbalance of the populations studied.⁷

By contrast, none of these flaws taints the research about single parenthood and cohabitation mentioned earlier.

Even if we were to ignore the methodological flaws in the research on same-sex parenting and take the existing findings as sound social science, the ASRM summary remains misleading. A number of studies have found significant differences between children raised in heterosexual marriages and those raised by same-sex couples. Stacey and Biblarz argue that these differences have a positive or simply different influence on children, but it is possible to view some of these differences as detrimental. Stacey and Biblarz note, for example, that Fiona Tasker and Susan Golombok “report some fascinating findings on the number of sexual partners children report having had between puberty and young adulthood. Relative to their counterparts with heterosexual parents, the adolescent and young adult girls raised by lesbian mothers appear to have been more sexually adventurous and less chaste.”⁸ Interestingly, Tasker and Golombok also found that boys raised by lesbians were less sexually adventurous as men, but since females are more at risk from “sexually adventurous” behavior, this is a small comfort.

Many people believe that homosexuality is a genetic trait, like eye color, unrelated to environmental factors and determined from birth. However, studies of monozygotic twins, who share the same genes and uterine environment, have found that identical twins do not always share the same sexual orientation.⁹ Since identical twins do not always share the same sexual orientation, environmental factors, like parenting, play a role in the development of sexual orientation. Stacey and Biblarz

⁷Judith Stacey and Timothy J. Biblarz, “(How) Does the Sexual Orientation of Parents Matter?” *American Sociological Review* 66.2 (April 2001): 159–183.

⁸The work by Tasker and Golombok mentioned by Stacey and Biblarz is *Growing Up in a Lesbian Family* (New York: Guilford, 1997).

⁹See, for example, E. D. Eckert et al., “Homosexuality in Monozygotic Twins Reared Apart,” *British Journal of Psychiatry* 148 (April 1986): 421–425.

note that “64 percent (14 of 22) of the young adults raised by lesbian mothers report having considered same-sex relationship (in the past, now, or in the future), compared with only 17 percent (3 of 18) of those raised by heterosexual mothers.” A 2010 study noted that, “examining structure of family of origin only, four percent of women who grew up in intact married families have had a homosexual sexual partner in the year prior to being asked, followed by women who grew up in intact cohabiting families (4.3 percent), those from married stepfamilies (6 percent), single divorced parent families (6.6 percent), always single parent families (6.6 percent), and cohabiting stepparent families (9.6 percent).”¹⁰ Other research has reported similar effects. As Stacey and Biblarz note, a study of gay fathers and their adult sons “also provides evidence of a moderate degree of parent-to-child transmission of sexual orientation.”¹¹

Some people point to sociological evidence indicating that opposite-sex couples on the whole behave differently than same-sex couples and that these differences are relevant to the raising of children. According to these studies, opposite-sex couples tend to have relationships of longer duration, lean more toward monogamy and sexual fidelity, and exhibit less violence than do same-sex couples. As Timothy Dailey notes,

While a high percentage of married couples remain married for up to 20 years or longer, with many remaining wedded for life, the vast majority of homosexual relationships are short-lived and transitory. This has nothing to do with alleged “societal oppression.” A study in the Netherlands, a gay-tolerant nation that has legalized homosexual marriage, found the average duration of a homosexual relationship to be one and a half years. . . . Studies indicate that while three-quarters or more of married couples remain faithful to each other, homosexual couples typically engage in a shocking degree of promiscuity. The same Dutch study found that “committed” homosexual couples have an average of eight sexual partners (outside of the relationship) per year. Children should not be placed in unstable households with revolving bedroom doors.¹²

If this evidence about the differences between same-sex couples and opposite-sex married couples is correct, then assisted conception for same-sex couples places the children thus conceived at greater risk than assisted conception for opposite-sex married couples. Children are likely to benefit more from being raised in family forms that are more long lasting, monogamous, and nonviolent.

Finally, the ASRM report asserts that, “as a matter of ethics, we believe that the ethical duty to treat persons with equal respect requires that fertility programs treat single persons and gay and lesbian couples equally to heterosexual married couples

¹⁰Patrick F. Fagan and D. Paul Sullins, “‘Women (Aged 14–44) Who Had a Homosexual Sexual Partner in the Past Year’ by Current Religious Attendance and Structure of Family of Origin,” *Mapping America* 93, May 2010, Family Research Council, <http://downloads.frc.org/EF/EF10E29.pdf>.

¹¹The study is J. Michael Bailey et al., “Sexual Orientation of Adult Sons of Gay Fathers,” *Developmental Psychology* 31.1 (1995): 124–129.

¹²Timothy J. Dailey, *Ten Facts about Counterfeit Marriage* (no date), Family Research Council, <http://www.frc.org/content/ten-facts-about-same-sex-marriage>.

in determining which services to provide.” This conclusion is a non sequitur. Equal respect for persons does not entail equal respect for every decision a person makes, let alone a duty to assist in every decision a person makes. Every person deserves equal respect of their basic rights—life and liberty—which entails a duty for each individual not to intentionally kill or enslave any innocent person. Equal respect does not entail a doctor’s duty to do whatever a patient requests. Imagine a knock on the door of a fertility clinic. It is welfare recipient Nadya Suleman, the single mother of fourteen children via assisted reproduction, whose oldest child is seven. She wants another round of IVF. According to the argument advanced by the ASRM, a physician not only *may* but *must* help Suleman have more children, lest the physician not respect her equality with other persons (J. A. Robertson, “The Octuplet Case: Why More Regulation Is Not Likely,” *Hastings Center Report*, May–June 2009).¹³ This is absurd. There is also generally a moral and legal duty not to discriminate according to age, but it is obviously wrong to assist an eighty-five-year-old woman in reproduction (M. Porter, V. Peddie, and S. Bhattacharya, “Debate: Do Upper Age Limits Need to Be Imposed on Women Receiving Assisted Reproductive Treatment?” *Human Fertility*, June 2007). A physician is not an automaton doling out whatever the patient requests regardless of the dictates of conscience.

Indeed, the definition, role, and importance of conscience are undeveloped in the report. Respect for the wishes of prospective parents is underscored, but respect for the physician’s conscience is ignored. How can we know whether the demands of conscience trump the requests of a patient for assistance in reproduction unless we know something about what conscience is and why conscience can make moral claims upon us? The report does not contribute to our understanding of this important question.

In sum, ASRM’s “Access to Fertility Treatment by Gays, Lesbians, and Unmarried Persons” does not provide sound guidance for decision making about assisting persons with infertility problems. The committee report relies on false premises, reasons invalidly, ignores well-known and abundant contrary evidence, leads to absurd conclusions, and fails to address the central question about the role of conscience in providing fertility treatment.

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¹³Robertson points out that, according to existing ASRM guidelines, doctors are allowed to refuse services if they think that a patient will not be adequate to the task of parenting. He also points out that existing ASRM guidelines were not followed in Suleman’s case, since according to the guidelines she would be eligible to have only one embryo implanted and not six. The guidelines thus conflict with the proposition that equal respect demands equal acquiescence to the requests of patients.