



Digital Commons@

Loyola Marymount University
LMU Loyola Law School

Philosophy Faculty Works

Philosophy

2020

Philosophy and Theology: Gamete Donation

Christopher Kaczor

Loyola Marymount University, Christopher.Kaczor@lmu.edu

Follow this and additional works at: https://digitalcommons.lmu.edu/phil_fac



Part of the [Philosophy Commons](#)

Digital Commons @ LMU & LLS Citation

Kaczor, Christopher, "Philosophy and Theology: Gamete Donation" (2020). *Philosophy Faculty Works*. 182.
https://digitalcommons.lmu.edu/phil_fac/182

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.



PHILOSOPHY AND THEOLOGY

Some people think of gamete donation as a morally neutral act or even a praiseworthy act, like blood donation. The gamete donor seems to harm no one and can help a couple who wants to have a baby.

But in fact, the ethics of gamete donation is more complicated.¹ Gamete donation often does harm someone, namely, the woman who is donating her eggs. The documentary *Eggsploitation* explores the stories of women who have lost their health, their fertility, and perhaps even their lives after undergoing artificially induced hyperovulation in order to donate twenty to twenty-four eggs. Moreover, gamete donation, at least as typically practiced in the United States, involves the creation of more human embryos than are implanted in any woman wanting to be pregnant. The result is “excess” human embryos that are killed, frozen, or otherwise abandoned. Gamete donation both directly and indirectly brings about significant harms.

In her essays “Rethinking the Moral Permissibility of Gamete Donation” and “The Wrongness of Third-Party Assisted Reproduction,” Melissa Moschella offers other arguments against the moral permissibility of donating eggs or sperm in order to create a new human being.² Moschella’s arguments against gamete donation do not appeal to consequences like the dangers of hyperovulation. Her reasoning would still hold even if only two human embryos were created by gamete donation and

-
1. Janet Smith and Christopher Kaczor, *Life Issues, Medical Choices* (Cincinnati, OH: Servant, 2016), nn. 19, 20; and Alexander Pruss, *One Body: An Essay on Christian Sexual Ethics* (Notre Dame, Indiana: University of Notre Dame Press, 2012), chap. 10.
 2. Melissa Moschella, “Rethinking the Moral Permissibility of Gamete Donation,” *Theoretical Medicine and Bioethics* 35.6 (December 2014): 421–440, doi: 10.1007/s11017-014-9314-4, all subsequent references appear in the text; and Melissa Moschella, “The Wrongness of Third-Party Assisted Reproduction: A Natural Law Account,” *Christian Bioethics*, 22.2 (August 2016): 104–121, doi: 10.1093/cb/cbw008.

both human embryos were implanted in utero. She offers arguments in principle and not just from consequences against the practice of gamete donation.

In examining the ethics of gamete donation, Moschella looks to the nature of the relationship between children and parents, as compared with the relationship between biological offspring and gamete donors. Moschella's thesis is that "gamete donation is inherently wrong insofar as it involves acting in a way that is highly likely to result in the acquisition of a non-transferable obligation to another person, without being willing to fulfill that obligation should it arise" (423). In other words, even if we could remove all the possible adverse physical and psychological consequences of gamete donation, there remains something wrong in principle with the practice.

Moschella's thesis presupposes the truth of animalism. Animalism is the view that human beings are essentially rational animals. The chief rival to animalism is the psychological view of identity, which holds that we are essentially the collection of our thoughts and desires.³ Moreover, Moschella depends upon the premise that "personal relationships that create personal dependencies trigger special, nontransferable obligations that correspond to those dependencies" (423). Both these presuppositions are explored also in her book *To Whom Do Children Belong?*⁴

In making her case against gamete donation, Moschella defines a human relationship as a "union or interconnection with another human being at the intellectual, volitional, emotional and/or bodily levels" (425). These relationships can differ in terms of *intensity* at any particular level. So, academic colleagues of similar belief living across the country from each other can write a book together and thereby share a high intensity of intellectual union but no connection at a bodily level. Relationships also differ in terms of *comprehensiveness* (across levels) of that union. So, best friends might relate intellectually (they share the same political beliefs), volitionally (they have lunch together frequently), and emotionally (they are delighted and distressed at the same things). Finally, relationships differ in how personal they are: "What makes a relationship specifically *personal* is that the ties that bind one person to another are *unique* characteristics, things about the parties that are not equally true of others" (425–426, emphasis original). This understanding of the *personal* harkens back to the Roman jurists, "Persona est sui iuris et alteri incommunicabilis" (a person is a law to himself and incommunicable to another.) What is *personal* is, in some sense, non-substitutable.

Moschella defines a personal relationship as "a relationship in which the parties relate as unique and irreplaceable individuals, not merely fulfilling a function which anyone with the relevant competencies could fulfill" (426). So the relationship between someone cashing a check and an anonymous bank teller is

-
3. For a defense of animalism and a critique of various psychological accounts of the identity of human beings, see Patrick Lee and Robert P. George. *Body-Self Dualism in Contemporary Ethics and Politics* (Cambridge: Cambridge University Press, 2007).
 4. Melissa Moschella, *To Whom Do Children Belong? Parental Rights, Civic Education, and Children's Autonomy* (New York: Cambridge University Press, 2016).

not a personal relationship, since this bank teller could be replaced with a totally different person with the same competencies for cashing checks. By contrast, the relationship between best friends is a personal relationship based on their unique characteristics, including a shared history common to them alone.

Personal relationships generate personal obligations. The shared history and intimate knowledge my best friend has of me places my best friend in a position to aid me that no other person occupies. As a result, my best friend can provide me with what I need and want in ways that another person (even an intelligent and well-meaning person) simply cannot provide. Moschella writes, “If my analysis is correct, then it is a general feature of personal relationships that each person in that relationship will have special, non-transferable obligations to meet the needs of the other insofar as those needs have arisen out of the personal relationship as such. This obligation is, of course, only a *prima facie* one which may be overridden by other, weightier obligations” (427). So, for Moschella, personal relationships ground special responsibilities that last as long as that personal relationship lasts.

The weightiness of these obligations depends upon the intensity and comprehensiveness of the personal relationship. So, the personal responsibilities that spouses owe to one another are quite weighty because the marital relationship is (often, if not by its nature) the most intense and most comprehensive of all relationships. By contrast, the personal relationship of casual friends does not enjoin the same level of personal responsibility for each other’s well-being.

Having laid out these parameters, Moschella turns to gamete donation. In giving an egg or sperm, the donors consent to becoming biological parents to their children. Genetic parents relate to their children as the cause of both their children’s existence and their children’s identity. Obviously, without an egg and a sperm, the sexual reproduction of a new human being cannot take place. Without *this* egg and *this* sperm, *this* human individual would not have arisen with his or her unique identity. If a different egg were used or if a different sperm were used, a different human being with a different genetic-bodily identity would have arisen. This child’s existence and this child’s identity depend upon this biological father and this biological mother. No substitutes, no other parents, could possibly have given rise to this child. Moschella points out, “The child–genetic parent relationship is initially the most intense and comprehensive—and therefore the closest—of that child’s human relationships. This gives us reason to think that the special obligations of parents to their genetic children are among the strongest of any human relationship, particularly considering the extreme neediness of human beings in the early years of life and (as I will argue below) the unique capacity of genetic parents to meet their children’s developmental needs fully” (430).

The child’s most intense and most comprehensive relationship is, at least initially, with the parents. The relationship between parent and child is absolutely permanent and irrevocable: “I am and always will be the genetic child of my genetic parents, and my genetic parents are and always will be my genetic parents, regardless of what happens to our relationship at the affective, volitional, and intellectual levels” (430). The same is true, of course, of brothers and sisters. Jesus taught that

the union of husband and wife is likewise indissoluble.⁵ A husband and wife remain husband and wife regardless of what happens to their relationship at the affective, volitional, and intellectual levels. Moschella argues that if a relationship is permanent, and if our ethical responsibilities arise in part from our relationships, then our ethical responsibilities in these permanent relationships are themselves permanent.

For genetic parents, these responsibilities are not simply to see that a child has whatever is needed for a good life. Obviously, adoptive parents can provide what children need for a good life. Hence she says, “When genetic parents cannot or will not raise their children, others can step in and do an excellent job, even an all-things-considered better job than the genetic parents would have done” (432). Despite this fact, Moschella argues that genetic parents have not provided what they have a responsibility to provide. Even if adoptive parents do an excellent job, it is still the case that the child has been treated unjustly by the genetic parents who neglected to give the child what the child was entitled to have. Parents have a responsibility to love their children, and by love Moschella means “a high-priority personal commitment to the well-being of another” (434).

What benefits can genetic parents *uniquely* provide? Moschella writes, “What genetic parents, and only genetic parents, can provide for their children is to know and love their children *themselves*, and to let their children know and love *them*. No one else can love my genetic children for me or receive their love in my stead” (434). She notes that it is true of everyone that their love is unique and irreplaceable, but what makes a difference here is the relationship between the parties. Not to be loved by some bus driver in Tulsa whom I have never met is one thing. But not to be loved by my own biological father or mother is something else entirely. Many people who are adopted or created through gamete donation mourn the loss of love from their biological parents. But not to be loved in an intimate way by a total stranger is not big loss or an ethical failing on the stranger’s part.

Now, this argument against gamete donation is complicated by the fact that in at least some cases, the child may not know that her conception took place via a donor. Perhaps an infertile married couple did heterologous in vitro fertilization, implanted the embryo in the wife, and then raised the baby on their own without telling the child or anyone else about the circumstances of their conception. The child in such a case may well think that she is being raised by her biological mother and father when in fact her genetic parents were gamete donors unknown to her. In such a case, the child would not be psychologically harmed. She would feel no sense of loss about not receiving love from her biological parents.

And yet it may still be the case that objectively speaking she has suffered a loss. However, to be treated unjustly and to be aware of being treated unjustly are two different things. Let us say I am the legal heir of a large fortune from a distant relative. Unaware of the provisions in my relative’s will, someone swindles me out of

5. Paul Mankowski, “Dominical Teaching on Divorce and Remarriage: The Biblical Data,” in *Remaining in the Truth of Christ: Marriage and Communion in the Catholic Church* ed. Robert Dodaro (San Francisco: Ignatius Press, 2014): 36–63.

my millions, depriving me of what was rightfully mine. In such a case, I have been wronged—treated unjustly—even though I am totally unaware of being wronged and treated unjustly.

Moschella acknowledges that not having the love of one's biological parents is fully compatible with leading a good life. And yet from the child's perspective, not to have this love involves a significant loss. Genetic parents have special obligations to their own genetic children, which are unique and weighty: unique because they are the only ones with these responsibilities, and weighty because the responsibilities of parenthood are among the most significant that a person can have. Moschella writes,

Genetic parents have uniquely weighty special obligations to their children, obligations which take priority over most other obligations. For genetic parents to appropriately prioritize their love for their genetic children, they need to situate themselves in the best position (within the limitations of possibility and competing obligations) to love their children. To cede that "best position" to someone else is to fail to do what their special obligation requires. Due to their physical and psychological proximity, those who actually raise a child are the ones best placed to love that child. Therefore, genetic parents can only love their genetic children adequately by raising those children themselves. (436)

So, what could defeat such an obligation? Moschella acknowledges that there are cases in which adoption is the best response to a situation in which the genetic parents cannot or will not care for their child. In such cases, genetic parents of good will can honestly say to their child that the adoption took place because their love for their child prompted them to put the child under the care of others. Adoption motivated precisely by love and concern for the child's well-being, rather than indifference or rejection of the child, is ethically acceptable.

But Moschella notes then that adoption differs from gamete donation. In adoption the child actually exists in utero or after birth, and a decision about the child's well-being is made. In gamete donation, the child does not yet exist, and a decision is made *ex ante* not to give that child a high priority and special love.

Moschella responds to the following objection: existence itself is such a benefit that love is shown to the child in his or her conception by donors. Her reply is that the child cannot be *benefited* before the child exists. The donor is not increasing the well-being of the child (since a non-existent child has no level of well-being to be improved) so the donor is actually benefiting someone else (perhaps herself if she is getting money for the donation) and using the child as a means to getting this benefit: "In that situation the child-to-be can only be looked upon with indifference or as a mere means to the benefit of someone else. Yet, both indifference and treating as a mere means are incompatible with love" (437). We might add that these are particularly incompatible with the love that a person should have for his own son or daughter.

Finally, Moschella disagrees with the claim that "it is agent causality that triggers parental obligations." She responds that, "progenitors have obligations to their genetic children even in the rare cases where they had no agent causal role in procreation" (422). These obligations are substantial and include the obligation to raise the child unless the parent is incompetent for the task. She holds, "Barring

situations of incompetence, genetic parents cannot love their children adequately without raising those children themselves” (437). Genetic parental “obligations are non-transferable—i.e., that they are obligations not simply to ensure that someone will raise one’s genetic child, but to raise that child oneself (unless one is incompetent)” (423).

I wish Moschella had explained at greater length what she means by *incompetent*.⁶ Imagine a thirty-year-old woman who is intelligent, conscientious, a wonderful friend, and enjoys a job with great benefits and flexible hours. It would seem that she is the opposite of incompetent. But if she became pregnant by rape, she would be the genetic (and gestational) mother of a child. Would she then have an obligation to raise that child? I am not sure how Moschella would answer that question. Maybe she would say that the rape victim, in virtue of her intelligence and material resources, does indeed have a serious obligation to raise the child of her rapist. This is hard to believe. Moreover, the rapist would have the same obligation, since he is the genetic father of the child. The victim and the rapist would also seem to have an obligation to have an ongoing relationship of a cooperative kind in virtue of having shared responsibility for raising their common child. This is really hard to believe. On the other hand, if Moschella holds that women who are raped have no obligation to raise their genetic child, then I wonder if *incompetent* is quite the right word to capture the conditions of defeasibility for the obligation to raise one’s own genetic child.

Despite these quibbles with her argument, Moschella provides an innovative and powerful way of critiquing gamete donation that does not depend upon the probable consequences of gamete donation. If her argument is right, gamete donation is seriously wrong even aside from the consequences.

CHRISTOPHER KACZOR

6. She does note, “What counts as incompetence is not a black-and-white matter. An argument could be made, for instance, that sometimes a child would be better off raised by a married mother and father in a stable household than by his single genetic mother, even if she has sufficient economic means to support the child” (116).