

Is it “Every Man’s Right to Have Babies If He Wants Them”? Male Pregnancy and the Limits of Reproductive Liberty

ABSTRACT. Since the 1980s, a number of medical researchers have suggested that in the future it might be possible for men to become pregnant. Given the role played by the right to reproductive liberty in other debates about reproductive technologies, it will be extremely difficult to deny that this right extends to include male pregnancy. However, this constitutes a *reductio ad absurdum* of the idea of reproductive liberty. One therefore would be well advised to look again at the extent of this purported right in other contexts in which it is deployed.

Since the 1980s, a number of medical researchers have suggested that in the future it might be possible for men to become pregnant. Advances in reproductive technology may make it possible for individuals who are chromosomally male to be impregnated via a surgical procedure and to gestate a child until it can be delivered surgically and supported by existing technologies of neonatal care (Gosden 1999, p. 175; *Herald* 1988; Silver 1997, Ch. 16; *Sunday Mail* 1988; *Sydney Morning Herald* 1984; Teresi and McAuliffe 1998; Walters 1990; Winston 1999, pp. 206–7).¹ The prospect of male pregnancy is worthy of ethical consideration in its own right just in case it does eventuate. Perhaps more importantly, it also offers a valuable opportunity to test the notion of “reproductive liberty,” which has extensive currency in the bioethics literature. Does the idea of reproductive liberty establish that it is “every man’s right to have babies if he wants them”? I argue that *given the role played by the concept of reproductive liberty in other debates about controversial reproductive technologies* it is extremely difficult to deny that this right should extend to include male pregnancy. However, this conclusion constitutes a *reductio ad absurdum* of the idea of reproductive liberty as it is currently used in

bioethics. Any notion of a right to reproductive liberty that extends as far as a man's right to gestate has lost contact with the facts about the biology of reproduction and its significance in a normal human life that made it plausible to defend the existence of such a right in the first place. As a consequence, I think ethicists would be well advised to look again at the extent of this purported right in other contexts in which it is deployed.

THE POSSIBILITY OF MALE PREGNANCY

The idea that men might become pregnant is speculative to say the least. The biological possibility of male pregnancy is suggested by the fact that a small percentage of extrauterine pregnancies in women are viable. Extrauterine pregnancies occur when an embryo implants outside of the uterus, most frequently in the fallopian tubes but also occasionally in other tissue (Alto 1990; Attaputta and Menon 1993; Hallat and Grove 1985; Martin et al. 1988; Strafford and Ragan 1977; Tay, Moore, and Walker 2000; Tsai, Chen and Yeh 1995; Winston 1999, p. 206). Most such pregnancies would, if allowed to proceed, result in hemorrhage, or other complications, and the death of the mother; for this reason diagnosis and termination of extrauterine pregnancy is an important part of basic obstetric care (Atrash, Friede, and Hogue 1987; Costa, Presley, and Bastert 1991; Ombelet, Vandermerwe, and Van Assche 1988). However, if they are not detected and terminated, a small number of these pregnancies end in the successful delivery of a baby by caesarean section (Badria et al. 2003; Gosden 1999, p. 175; Jackson et al. 1980; Ludwig et al. 1999; Ombelet, Vandermerwe, and Van Assche 1988; Xiao et al. 2005).

Remarkably, according to several reports, there is experimental evidence to suggest that it is unimportant whether an embryo implants within a male or female body; the developing blastocyst seems to have the ability to generate a placenta to support it if it can attach to any piece of blood rich tissue (Kent 1986; Teresi and McAuliffe 1998, p. 176). Male "pregnancy" might be possible if it is possible to implant an embryo into tissue in the abdominal cavity of a man such that a placenta would form and fetal development commence to the point where a baby could be delivered by caesarean section (Gosden 1999, p. 175; *Sunday Mail* 1988; Walters 1990; Winston 1999, p. 207). It seems likely that the administration of female hormones will be necessary in order to encourage implantation to occur in a male body (*Sunday Mail* 1988; Winston 1999, p. 207). Further hormonal and chemical manipulations—as well as careful medical monitoring—are also likely to be required to allow the fetus to develop

to the point that it could be delivered by caesarean section (Kent 1986, p. 8; Silver 1997, p. 193; Teresi and McAuliffe 1998, p. 179). Note that because of the development of sophisticated and relatively successful technologies of neonatal intensive care it would only be necessary for the man to carry the child until about 28 weeks of gestation in order to make a viable pregnancy possible.

It must be observed, however, that significant medical obstacles would have to be overcome before it would be ethical to perform such a procedure. The overwhelming majority of naturally occurring extrauterine pregnancies are *not* viable and constitute a grave risk to the health of the mother. Unless it could be shown that a particular technique for inducing extrauterine implantation did not carry these risks, attempting to produce a male pregnancy would be unethical. There are also significant obstacles associated with wound healing after removal of the placental mass, which would need to be overcome (Gosden 1999, p. 175; Teresi and McAuliffe 1998, p. 178; Winston 1999, p. 207). More generally, there are questions about the impact of sustaining a pregnancy on a male body. Yet none of these obstacles can be said definitively to be insurmountable (*Herald* 1988; Kent 1986; Teresi and McAuliffe 1998, p. 178; Walters 1990; Winston 1999, p. 207).²

Note that the risks involved would not need to be reduced to zero in order for it to become ethical to perform this procedure on a patient's request. Women typically are allowed to embark upon and to continue pregnancies even when there are significant risks to their health, as long as they provide an autonomous consent to doing so. Reproduction is generally recognized as being a project of sufficient value that it is reasonable to take some risks to achieve it. The level of risk involved in male pregnancy need only be reduced to the level at which one would be inclined to respect a woman's autonomous consent to medical procedures intended to facilitate a risky pregnancy, before it might be ethical to try to produce a male pregnancy.

There is, however, another important limit on the moral permissibility of attempting to establish a male pregnancy, namely the well-being of the child that would be gestated in this unusual fashion. One of the functions that the uterus plays in ordinary pregnancy is to protect the developing fetus from impact injuries or from being damaged through compression against other bodily organs during the course of the pregnancy. A child being gestated in an abdominal pregnancy would be devoid of such protection and consequently subject to extra risks of potentially serious injury

perhaps leading to deformities at birth (Gosden 1999, p. 176; Ombelet, Vandermerwe, and Van Assche 1988; Walters 1990, pp. C21–22). If these risks are too high, then it would be unethical to proceed with male pregnancy.

Again, a comparison with the ethics of proceeding with normal pregnancies is instructive. The fact that there is a known risk that a woman will give birth to a child who may suffer from various health problems is not in itself an insurmountable ethical barrier to her becoming pregnant or proceeding with a pregnancy. The ethics of bringing children into the world who may have worse prospects in life than other children who might have been born are complex and controversial. However, there is an emerging consensus in the bioethics literature that it is only absolutely wrong to bring into the world children who are unlikely to have “a life worth living” or who are likely to feel “that it would have been better if they had not been born at all” (Bennett and Harris 1999, p. 19; Feinberg 1987; Harris 2000, p. 29; Robertson 1998, p. 1405; Steinbock and McClamrock 1994; Strong 2005). It seems unlikely that this would be the case for children born of male pregnancy. Obviously, it will be imperative to research and minimize the risks to children who might be born to men, before male pregnancy should be attempted. However, there is no reason at this stage to believe that it will be impossible to reduce these risks to levels comparable to those accepted for pregnancies in women.

Another technology that might make male pregnancy possible, which would avoid some of the difficulties described, is uterine transplants (Caplan et al. 2007; Gosden 1999, p. 176). Surgeons already have succeeded in transplanting a uterus and securing subsequent pregnancies in animal models (Altchek 2003, p. 159; *BBC Health* 2002). There do not appear to be any barriers in principle to transplanting a uterus into a man, although it is less clear whether the male body has the additional hormonal and physiological resources necessary to allow a pregnancy to go to term. Yet, again, although there may be risks to the man involved in this procedure, it seems probable that they could be reduced to a level comparable to those associated with other reproductive projects that normally would be held to be ethical.

Of course, it may be that it proves to be impossible to develop either of these procedures to the point where they are safe and effective enough for it to be ethical to perform them—in which case the idea of male pregnancy can only be of theoretical interest.³ However, it is my contention here that it *is* of significant theoretical interest insofar as the consideration of male

pregnancy permits investigation of the limits of one's intuitions about reproduction in a new and unfamiliar context.

REPRODUCTIVE LIBERTY

The idea that there is a distinctive sphere of human liberty marked by its connection with reproduction appears in various forms in the bioethics literature. Ronald Dworkin (1993) argues that a right to “procreative autonomy” is recognized in United States jurisprudence surrounding *Roe v. Wade* and that a presumed right to procreative autonomy should play a central role in decision making about the regulation of reproduction. John Robertson's influential book, *Children of Choice*, attempts to resolve a number of questions about the ethics of the use of new reproductive technologies by postulating a strong right to reproductive liberty (Robertson 1994, esp. pp. 22–42). Many other bioethicists, including Julian Savulescu (1999; 2001), Dan Brock (1994), and John Harris (2004), have made extensive use of the idea of reproductive liberty in their work.⁴

The basic idea common to all these notions of reproductive liberty is that reproduction is a central part of a normal human life and is often a key component of individuals'—and couples'—life plans (Winston 1999, p. viii). The core liberal intuition that individuals should, as much as is possible, be free to determine their own fates and to resolve for themselves the central dilemmas of human existence therefore implies that individuals should be allowed to settle questions around reproduction by themselves (Brock 1994, pp. 47–49; Robertson 1994, pp. 24–25).

The central role that reproduction plays in the human life cycle also distinguishes the harms done by infringements of reproductive liberty from those done by infringements of other liberties. State action that limits or frustrates couples' reproductive projects can result in profound harms to the individuals concerned, as it frustrates some of their deepest and most intimate personal projects (Brock 1994, pp. 49–50; Robertson 1994, p. 24).⁵ Indeed, some of the worst excesses of the use of state power in the last century involved states' attempts to regulate or direct reproduction. This grim history—of eugenics and of laws against interracial marriage, programs of sterilization and forced abortion, and the use of rape as a weapon of ethnic warfare—provides a strong pragmatic/political reason to defend a right to reproductive liberty (Robertson 1994, p. 25).

There are at least two functions that the notion of reproductive liberty plays in discussions about controversial reproductive technologies.

The first is to assert the right of those engaged in reproductive projects to be free of government interference. The importance of reproductive freedom establishes an extremely strong presumption against laws regulating who may have children, or when, or with whom individuals may have children. Similarly, legislation that prevents individuals from using contraception also violates reproductive liberty by denying them the option of avoiding reproduction.

The second use to which the notion of reproductive liberty is put is to support the idea that there exists some reason to assist people in relation to their attempts to control their reproduction. According to this way of thinking, reproductive liberty is reduced when couples are restricted in their ability to reproduce by infertility, or restricted in their ability to avoid reproduction by ignorance or lack of access to contraception, and not just by law.

One way to understand this broadening of the right to reproductive liberty is as a consequence of the idea that there is an obligation to *promote*—and not merely to *honor*—reproductive liberty (Baron, Pettit, and Slote 1997, pp. 125–33). If reproductive liberty is important it seems unlikely that society should be content merely with not interfering when people exercise it—it also should try to ensure that people *can* exercise it. The value of reproductive liberty establishes a weak positive right of access to the resources necessary to be able to exercise choice about reproduction.⁶ In particular, the notion of reproductive liberty is used to argue that there are good reasons to devote medical research and resources to treating infertility, as well as for providing access to contraception for those who wish to avoid reproduction but otherwise would likely be unable to do so (Brock 1994, p. 44).

This second use of the notion of reproductive liberty is—rightly—a controversial one. Philosophers of a liberal or libertarian persuasion, to whom the idea of reproductive liberty naturally appeals, do not like to think they may be endorsing anything like a positive right. Indeed, Robertson (1994, pp. 23, 29) explicitly denies that his notion of reproductive liberty is a positive right.

Nevertheless, the notion of reproductive liberty commonly is used in the positive sense, especially in debates about new reproductive technologies (Brock 1994, p. 44).⁷ The high level of public support for in vitro fertilization (IVF) research and programs in many countries around the world is striking evidence for the extent to which the right to reproductive liberty has been successfully mobilized to this end. The idea of reproductive

liberty also often is invoked in the attempt to respond to critics of new reproductive technologies such as human cloning via somatic cell nuclear transfer (SCNT), or of controversial uses of preimplantation genetic diagnosis, by arguing that any regulation of these technologies constitutes an unjustified interference in the reproductive liberty of those individuals who want to use them (Harris 1999, p. 150; Murphy 2000, p. 215; Robertson 1998, pp. 1371, 1390; Strong 2000, p. 208). A purely negative right to reproductive liberty will not suffice to achieve this argumentative purpose because what is required for couples to become pregnant through the use of such reproductive technologies is not merely to be left alone but to receive the care and attention of a group of medical specialists—that is, positive assistance. Indeed, not only do couples require the assistance of medical specialists, they often also need support from the state. The medical groups that provide these services typically function in the context of a state-subsidised medical research infrastructure. Legislation that regulates these technologies typically will *not* deny the *right* of the individual to reproduce but will constrain individuals' rights to access or provide the services necessary for them to do so using a particular technology. Thus many purported violations of reproductive liberty can only be properly described as such if reproductive liberty includes some positive rights to access public resources.⁸

In these cases, the positive nature of the right being postulated is obvious. However, even when a reproductive technology is developed and offered entirely within the private sector, its availability to individuals depends upon a state-sanctioned network of contractual relations. As legal battles over contested surrogacy arrangements and access to IVF demonstrate vividly, some reproductive technologies cannot achieve their intended purpose without legislative or judicial action that extends the law in relation to parenting, custody, and adoption. More generally, the social relations that constitute the context in which reproductive projects have their meaning are both reflected in, and partially determined by, legal and institutional arrangements. The possibility of achieving success in reproductive projects involving the new reproductive technologies therefore often depends on the existence of the appropriate social and legal context (Jackson 2001, pp. 7–8; Brock 1994; Kass 1997, p. 24; Hanmer 1987, p. 700). A right to reproductive liberty that simply denied the moral authority of the state to legislate in relation to reproduction would be useless here. In order for the idea of reproductive liberty to play a role in establishing the freedom of individuals to use these technologies

to achieve their reproductive goals, it must ground an argument that the state should legislate in a particular way. That is, it must establish that there are reasons to arrange social institutions so that people are able to pursue their reproductive projects using new technologies (Brock 1994, p. 45; Jackson 2001). The use of the concept of reproductive liberty in debates about new reproductive technologies therefore suggests that in many cases it does have elements of a “positive” right.

I am sympathetic to the notion of reproductive liberty, in both its negative and more “positive” forms. However, I also am suspicious of the amount of work the idea does in debates about new reproductive technologies. The hypothetical case of male pregnancy offers a useful test case to examine how far this purported right might extend.

EVERY MAN’S RIGHT TO HAVE BABIES?

Once one acknowledges the theoretical possibility of male pregnancy, the question obviously arises whether the notion of reproductive liberty might be used to defend the idea that it is every man’s right to pursue it. In this section, I argue that, given the uses to which reproductive liberty has been put in other debates around reproductive technology, it is exceedingly hard to deny that the right to reproductive liberty should extend to include men’s right to have babies. In the next section, however, I argue that this conclusion constitutes a *reductio* of any argument for an unconstrained right to reproductive liberty.

For the foreseeable future, a negative right to be left alone will not be sufficient to allow men to become pregnant. They will need access to the appropriate medical technology, which in turn means that they need research into the development of this technology to be adequately funded. More importantly, although it might become possible for men to gestate a fetus in the abdominal cavity, it is not clear that this would constitute *pregnancy* unless it was also the case that at the conclusion of this process they were the social and gestational mother of the child by virtue of having carried it. Insofar as being the mother is a *social* relation, social and institutional changes will be necessary before men can become mothers in this fashion. Similarly, in as far as being the mother of the child is a *legal* relation, legislation or judicial decisions will be necessary to establish that men who give birth to children are their legal mothers. Thus, to the extent that the technology of male pregnancy is intended to allow men to become mothers, its success will depend upon legal and institutional changes.⁹

It therefore seems highly unlikely that the question of men's negative right to have babies will arise unless a positive right of reproductive liberty, extending to include male pregnancy, can be established. I therefore concentrate on whether the idea of reproductive liberty might be invoked in order to establish a positive duty to assist men who wish to become pregnant. Having investigated the positive case for male pregnancy, one is in a better position to assess the strength of any possible negative right against laws forbidding men from becoming pregnant.

It seems likely that some men would desire to have the intimate and extended bodily relationship with the process of the creation of a child that is afforded by pregnancy.¹⁰ In particular, some male homosexual couples may wish to avail themselves of the opportunity to give birth to and raise a child themselves without the need to employ a surrogate mother.¹¹ Some heterosexual men may also be keen to take on a greater share of the burdens of parenthood by becoming the gestational mother as well as the genetic father of their child (Teresi and McAuliffe 1998, p. 181). Chromosomal males who have undergone gender reassignment surgery in order to become—as much as is physiological possible—women might be expected to have a strong interest in being able to fulfil the biological role of being a mother that is increasingly (rightly or wrongly) held to be the defining feature of womanhood and which currently is denied to them (*Sydney Morning Herald* 1984). Indeed, the most likely motive for developing the technology necessary to realize male pregnancy is to allow male-to-female transsexuals to become (gestational) mothers (Silver 1997, p. 228; Teresi and McAuliffe 1998, pp. 180–81; Walters 1990).

The strong desire, in some cases approaching a psychological need, of some individuals to pursue this novel reproductive project, combined with a recognition of the importance of reproductive liberty, seems to establish a *prima facie* obligation of society to assist them to do so. The precise strength and extent of this obligation are of course open to question. However, those in favor of a male right to pregnancy might plausibly argue that the desires of each man who wishes to become pregnant but is currently unable to do so should carry the same weight and provide the same impetus for medical research and legal change as the desires of each woman who was unable to become pregnant did for the development of the IVF and other reproductive technology programs (Brock 1994, pp. 8–9).

An immediate possible objection to the use of medical resources to this end is founded in the observation that by-and-large the men seeking access

to this technology will not be infertile (Walters 1990, p. C19). The vast majority of them will (presumably) be capable of fathering a child and therefore of accessing the experience of parenthood that is ordinarily available to men.¹² Although I claim below that the question of an individual's fertility is ultimately a distraction in this context, I also argue later in the paper that reproductive liberty for men should not include the right to become pregnant because their proper reproductive role is fatherhood. However, insofar as this conclusion relies on a substantive, and possibly controversial, normative account of parental roles, it is not one with which defenders of reproductive liberty should be too comfortable.

Indeed, there are three obvious arguments available to defend the claims of men who, despite being capable of fathering a child, want to have access to this technology but who are being denied it on the grounds that they are not infertile.

The first is that although they may be capable of fathering a child, this is not the reproductive project that they wish to embark upon and that is central to their life plan. What they desire is not to father a child but to give birth to one. Moreover, the arguments that establish the importance of reproductive liberty work best in relation to the experience of motherhood. It is motherhood—and especially pregnancy—rather than simply parenthood that is a central experience of the human life cycle and that establishes the more profound, intimate, and long-lasting relationship with a child.¹³ It seems that the moral weight of the desire to become pregnant is lessened only partially, if at all, by the fact that alternative means of making a genetic contribution to the creation of a child are available. As a result, a woman who is capable of making a genetic contribution to the creation of a child via the implantation of one of her fertilized ova in a surrogate mother does not thereby have a diminished right to access IVF procedures that might allow her also to gestate a child. In circumstances where a person may become either a gestational or genetic parent, reproductive liberty may therefore include the right to determine this choice for oneself.

The comparison with current practice regulating access to IVF procedures suggests a second line of defense of men's right to have babies. There are many other circumstances in which fertile individuals are granted access to reproductive technologies to assist them in pursuit of their reproductive goals. This is because infertility is a property of couples, as well as of individuals. Couples are ordinarily granted access to medical resources to allow them to have a child together, despite the fact that one (or even both)

of them is individually fertile and capable of reproducing with another partner. Thus, for instance, intracytoplasmic sperm injection allows women to have a child with their particular partner, even though they themselves may be fertile and capable of getting pregnant by another man.

Male homosexual couples who wish to make use of the technology necessary to secure male pregnancy might equally well argue that although as individual men they may be fertile, as a couple they are not (Murphy 2000). This argument also might work in cases involving heterosexual couples, where the woman is unable to become pregnant by any means, and so the man wants to carry the child.¹⁴

Of course, this argument may not be available to heterosexual couples who simply wish to reverse their normal reproductive roles, nor for single men. Even here, the analogy with arguments about other reproductive technologies may offer some solace. The third reply available to men who wish to become pregnant, but who might be denied access to this technology on the grounds that they can already father children, is to point out that reproductive liberty is supposed to include the right to make unconventional reproductive choices, including the right to reproduce in the context of unorthodox family arrangements. Again, the bioethics literature is replete with examples of writers defending the rights of individuals to use reproductive technologies to conceive using donor gametes, or to clone themselves, or to access and provide surrogacy, despite the fact that doing so often involves bringing children into the world who have single parents, or multiple parents, or where the precise relationship to the various parties who have contributed to their birth is unclear (Harris 1999; 2000; Jackson 2001; Murphy 2000; Pence 1998; Robertson 1994; 1998). Some of these technologies, most notably SCNT cloning and surrogacy involving the use of donor gametes, also involve the birth of children whose genetic relationship to the person or persons who have initiated the project of reproduction is substantially different to that produced by ordinary reproduction. Insofar as the notion of reproductive liberty is invoked to defend individuals' rights to make use of reproductive technologies in these circumstances, it seems it should also extend to include men's right to become pregnant.

If one grants a right to (some) assistance to become pregnant then it seems that one also should grant a (stronger) negative right against interference in men's attempts to become pregnant. State action that prevents men from becoming pregnant will frustrate a reproductive project that may be deeply meaningful to them.

THE LIMITS OF REPRODUCTIVE LIBERTY

Despite all of this, to talk of a male *right* to pregnancy is to parody both the language of rights and the desires of infertile women to give birth.¹⁵ Any argument for a right to reproductive liberty that extends as far as a man's right to become pregnant has lost contact with the facts about the biology of reproduction and its significance in a normal human life that made it plausible to defend the existence of such a right in the first place. I take it that there is a fairly obvious sense in which this conclusion constitutes a *reductio ad absurdum* of the notion of reproductive liberty. (In the penultimate section of the paper, I offer some arguments addressed to those readers who do not share this intuition.)

In order to understand where the argument above has gone awry, one needs to look again at what made the right to reproductive liberty appear plausible in the first place. Reproductive liberty is not simply an ordinary right to self-determination that happens to be exercised in the context of reproduction: the context of reproduction is essential to it and explains the importance placed upon it. The argument for reproductive liberty therefore relies for its force on facts about the role that reproduction plays in the normal human life cycle.

This is most obvious in relation to the arguments for reproductive liberty that focus on harms associated with its infringement. One's sense of the nature and magnitude of these harms depends on an understanding of the role that reproduction and pregnancy play in a normal human life cycle, the joys that they can bring, and the frustrations and suffering of couples who are unable to reproduce and of women who are unable to become pregnant. The moral weight of these frustrations depends on one's knowing that these experiences are central experiences in a normal human life, such that it is appropriate for individuals to regret it deeply when they are unable to experience them.

However, it is simply not the case that pregnancy is a normal part of men's lives. It is not a tragedy when a man cannot become pregnant—no matter how much he wishes to be pregnant. Barriers to men becoming pregnant do not constitute restrictions of reproductive liberty in the same way as do barriers to women becoming pregnant. This is not to deny that individual men may strongly desire to become pregnant. Yet this desire is not a desire to enjoy the success of normal reproductive projects such that it engages with one's sense of the especial value of reproduction and establishes an obligation to respect or promote it.

The normal context of reproduction also plays an essential role in the understanding of the importance of reproductive liberty insofar as it is thought to be a consequence of a more general right to self-determination. The argument that liberals should make special efforts to respect individuals' reproductive projects also relies upon intuitions that reproduction is a special human experience, which are themselves informed by the reality (including the biology) of human reproduction. Not every project that individuals fix upon as being central to their life plans grounds an argument for a strong presumptive right of the sort characterized by the right to reproductive liberty. Recognizably frivolous, or trivial projects, for instance—although they may be central to particular individuals' life plans—are poor foundations upon which to ground an argument for the protection that rights afford. The core liberal rights, which are founded in, and defend, a right to self-determination—freedom of speech, freedom of religion, freedom of movement, and so forth, including reproductive freedom—each protect a sphere of activity that plays a central role in individuals being able to develop and to pursue a conception of the good life. Moreover, each of these spheres is defined with reference both to certain core or paradigmatic examples of these activities *and* to examples that are acknowledged to lie at their limits. Thus, for instance, political debate and criticism lie at the center of the area protected by freedom of expression, while playing loud music late at night lies at its limit. Finally, the central and limit cases of the application of a right are themselves informed by one's sense of whether particular projects are plausible candidates upon which to found a claim against others by virtue of the contribution that they make to one's conception of the good.¹⁶

The idea that whether an activity falls within a right depends in part on a set of substantive judgments about what sorts of projects can contribute to a meaningful life will be unpalatable to a certain sort of liberal. However, the argument just presented simply points out that rights cannot be summoned into existence *ex nihilo*. The interests that found rights must be capable of being described in ways that can communicate their importance to others. Moreover, the application of a right always involves these sorts of judgments about the merits of the claim that some particular project falls within it: otherwise one would have no way of adjudicating when rights conflict. In order for a rights-based ethic to be plausible, it must be possible to gain a sense of the relative strengths of different sorts of rights claims. This inevitably will involve reference to the goods that rights are intended to serve and also the likelihood that particular activities will be integral to those goods (Taylor 2006).

The problem with grounding a male right to pregnancy in a more general right to self-determination, then, is that in the context of the normal reproductive life cycle for men, it is a frivolous claim. This is, I think, the primary source of the intuition that defending “men’s right to have babies” is just plain silly. Because pregnancy is not a reasonable expectation in men, men who wish to become pregnant are not capable of establishing that this desire should be granted the same moral weight as women’s desires to become pregnant.

This means that the importance of reproduction cannot ground an argument that society should provide the resources to research the technology necessary to allow men to become pregnant. It also suggests that no *negative* right to male pregnancy exists. Hypothetical laws prohibiting men from becoming pregnant would not interfere with a project that is entitled to the same level of respect granted ordinary reproduction.

Of course, in making an appeal to the normal reproductive capacities of men, I am making an argument about “normal” human bodies of a sort that is often, rightly, controversial. The “average” capacities of human bodies in any society at a given historical moment are in part determined by the available medical (and other) technology and also by diet. It is not impossible that at some stage in the future, if the technology required for male pregnancy were developed and widely adopted, that the average male might have the capacity for pregnancy. Yet the idea of a normal human body is more than just the idea of the average human body. It is instead an essentially Aristotelian notion of species typical functioning of the sort relied upon and defended by Norman Daniels (1985) in his classic investigation of the right to health care. If Daniels is correct—as I believe he is—in holding that the idea of normal species functioning plays a crucial role in shaping one’s intuitions about the importance of health care, then it should come as no surprise that it also plays a role in shaping one’s intuitions about reproductive rights. However, a full account of the nature and significance of the idea of normal human reproductive capacities is beyond the scope of this paper. My aim here has simply been to argue that the notion of reproductive freedom makes reference to facts about reproduction that are inevitably facts about human bodies and that these bodies are plausibly *sexed* bodies.

SOME IMPLICATIONS

Any conclusion about the scope of reproductive liberty will have far-reaching implications for other bioethical questions because the notion of

reproductive liberty is used in so many bioethical debates. I briefly touch upon two cases where my argument has obvious applications, especially as these might also be thought to be test cases for the plausibility of my conclusion.

The first application of the argument previously developed is in the case of reproductive human cloning by somatic cell nuclear transfer. A “right to clone” has been defended on the grounds of reproductive liberty by a number of important writers in the area (Brock 1998, p. 145; Harris 1999, p. 150; Murphy 2000, p. 215; Strong 2000, p. 186). Yet as several other writers have noted, SCNT cloning is a long way from the ordinary process of reproduction—allowing as it does birth without conception (Kass 1997, p. 20; Robertson 1994; Steinbock 2000). This has led Leon Kass (1997), for instance, to suggest that reproductive liberty does not extend as far as access to the technology required to allow persons to clone themselves. My argument here lends weight to these reservations. If there is one natural limit on the extent of reproductive liberty, the sex of the mother, there may be others. It does not seem implausible to think that the right to reproduce is limited to the right to reproduce by sexual rather than asexual reproduction.

Another, perhaps more controversial, application of my argument is possible in relation to the use of IVF to allow post-menopausal women to become pregnant. Just as the different reproductive roles of the two sexes are part of the normal context of reproduction, it is also arguably the case that the existence of a window of opportunity during which to reproduce is itself part of the normal context of reproduction. Pregnancy is a project that becomes possible in that period of a woman’s life between menarche and menopause. Thus an inability to conceive a child before menopause constitutes infertility, which may be a tragedy for a woman and which establishes some obligation on those who are able to help her to overcome her infertility to do so, whereas an inability to become pregnant with a child after menopause is a normal part of the human life cycle (Ethics Committee 2004). It therefore might be argued that reproductive freedom does not extend to the right of a woman to become pregnant after having undergone normal menopause.

I believe it to be a virtue of the argument of this paper that it makes possible an argument to this conclusion. Many people have the intuition that, although IVF is a beneficial medical technology for couples experiencing infertility, women who are past menopause have a much weaker—if any—right to access this technology (Schenker 1997, p. 179; Editorial

1993; Ethics Committee 2004). Linking the right to reproduce to the normal context of reproduction explains why this might be the case, without relying on improbable—and, in any particular instance, easily falsifiable—claims about the capacity of older women to provide and care for their children (Jackson 1995). Moreover, my argument supports this (to some) intuitively attractive limit on the right of postmenopausal women to access IVF technology without denying that its use to treat infertility due to disease or other organic dysfunction is entirely appropriate.

Another interesting feature of the argument developed here is that it both highlights and affirms the bifurcation at the heart of society's ideas about normal human bodies. Sexual difference occupies an uneasy place in debates about the normal capacities of human bodies, immediately problematizing any account of what constitutes "normal human capacities" by throwing into question which sex should be understood as the norm. My argument insists that sexual difference itself constitutes a normal and morally significant feature of the human condition. Although this may seem trivial, it is an intuition—and indeed a state of affairs—that is increasingly under threat in contemporary bioethics due to the ever-increasing transformation of the capacities of the human body by technological means. If one denies that sexual difference has any normative significance, then once society possesses the technological power to transcend chromosomal sex, there is no reason for individuals to settle for the capacities of one sex or the other. Moreover, once one starts to view sex as an arbitrary limit on the capacities of individual bodies the question naturally arises as to which sex has *superior* capacities to the other. If technology can erase or transcend sexual difference then presumably it should. Finally, if technology becomes powerful enough, all those bodies that have capacities less than those of both sexes combined will have reason to adopt a technological solution to this "problem." By linking biological sex to reproductive rights and insisting that this link is normatively significant, my argument offers one way of resisting this dialectic. It both motivates and facilitates a defense of sexual difference as an essential fact of the human condition. Given the unpalatable nature of the alternative—that sexual difference is a technological limit waiting to be overcome—I think that this is another consideration in favor of my argument.

THE TRAGEDY OF "MALE BARRENNESS"

Before concluding, it is worth considering the implications if I am wrong in the argument that I have presented here: that is, if men do have

a substantive right to reproductive liberty that includes the freedom to become pregnant. Granting rights acknowledges the moral weight of the corresponding interests that underpin them. Thus conceding a male right to pregnancy implies that men have a morally significant interest in becoming pregnant. One also must acknowledge that it is an option that is currently closed to men due to an unfortunate accident of biology. Indeed, an implication of acknowledging the existence of this right is admitting that 50 percent of the human species currently are unable to exercise a central reproductive right. All men currently suffer from a tragic form of infertility—“male barrenness”! It is true that the vast majority of men are not troubled by this sad state of affairs. However, it is hard to see how one could hold that men have an interest in male pregnancy sufficient to ground a right to it without implying that they should be troubled by it.

If one grants the existence of male barrenness, it seems that—as long as it is possible to identify a cohort of men who strongly desire to have babies—one has good reason to fund research dedicated to helping men overcome this regrettable infertility. Moreover, unless one is prepared to grant a normative significance to sex, one should not discriminate between the claims of those suffering from male and female barrenness and one should take this infertility as seriously as other forms of infertility that affect women. This radical and counterintuitive conclusion should serve as a reminder of the cost of what otherwise might seem to be an idle philosophical gesture in extending a right to pregnancy to men.

CONCLUSION

I must emphasise that I do not intend my argument here to be an argument against male pregnancy *per se*. My conclusion concerns only the extent of the right to reproductive liberty. It may or may not be a good idea to develop the technology that would allow men to become pregnant. If (some) men really want to become pregnant, this is presumably a *prima facie* reason to assist them in becoming so. Moreover, I have not set out to identify any substantial harms that would occur as a result of making this technology available.¹⁷ Thus I have not made any attempt to balance the considerations for and against male pregnancy itself.¹⁸

However, I have argued that it is a grave mistake to speak of a male “right” to pregnancy, or to promote this technology with reference to the reproductive liberty of men. The facts about reproduction, the role it plays in a normal human life, and the harms that result from its infringement, which inform our society’s sense that social or natural limitations on a

woman's ability to become pregnant are barriers to *reproductive* liberty and not just to liberty more generally, do not support an argument that a man's inability to become pregnant represents a limit on his reproductive liberty.

There is a danger that, because I have used *reductio* as my form of argument, I may be thought to have established only the obvious: that men have no "right to have babies." However, in the context of a bioethical literature, in which the right to reproductive freedom is used to defend a right of access to an ever-increasing range of reproductive technologies and in which few limits on the capacities of actual human bodies are held to have any normative weight, this is by no means a trivial conclusion.

There is also the contrary danger that I have succeeded only in proving that men *do* in fact possess such right. One author's *reductio* is, after all, another critic's brave and revolutionary conclusion. I know that some bioethicists will be only too pleased to reject the biological limits on individual's reproductive capacities upon which my argument relies and which it defends. Yet I am confident enough of the intuition that the extension of the right to become pregnant to men is a parody to think that this is a mistake. I therefore will not be unhappy if, in response to this paper, bioethicists such as Julian Savulescu, John Robertson, and John Harris are moved to defend "every man's right to have babies if he wants them."

Finally, regardless of what one ultimately concludes about the existence of a male right to reproductive liberty that includes a right to pregnancy, I hope that at the very least I have shown that the possibility of male pregnancy offers a useful and informative context in which to test the limits of one's intuitions about reproductive freedom and about the extent to which one should transform the capacities of human bodies.

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NOTES

1. A sophisticated guerrilla art (hoax) website exploring this idea exists online at <http://www.malepregnancy.com> (accessed 14 August 2008).
2. Robert Winston (1999, p. 207) observes that they "seem insurmountable," but of course this is by no means the same thing; many other results once thought "impossible" already have been achieved in the field of reproductive medicine.
3. Even if it proves to be impossible to reduce the risk involved in male pregnancy to a level at which it would be ethical to pursue it, there is a

medical technology that has featured centrally in discussions of the future of reproductive technology—ectogenesis—which may offer significant new reproductive opportunities to men. Existing medical technology is capable of sustaining the lives of infants delivered as early as 22 weeks of gestation. Meanwhile, research is also underway that is dedicated to sustaining the development of embryos *in vitro* for longer and longer periods. It is possible that these technologies will develop to the point at which the periods over which they can sustain life will overlap, so that it becomes possible to bring a child into the world without the involvement of a human womb (Coleman 2004; Rivkin 2002). If this were to become possible, it is conceivable that an individual man might take charge of the entire process from the conception of an embryo—using donor ova—to the “delivery” of a developed child and therefore, to some extent at least, become its “mother.” Whether this process would have sufficient psychological and social features in common with ordinary pregnancy to be thought of as a form of (albeit external) pregnancy is a matter for debate. It may be that this technology is better thought of as eliminating the gestational mother from the process of reproduction altogether.

4. These authors differ on whether the central concept is best described as “reproductive liberty,” “reproductive freedom,” or “procreative autonomy.” The source of the terminological disagreement is a dispute over the extent to which this right should be thought of as involving “positive” claim rights. I argue, following Brock (1994), that any notion of reproductive liberty adequate to the tasks that are required of it in contemporary debates about access to reproductive technology must necessarily include some positive rights. For that reason, in what follows I do not distinguish between these various notions, believing them all to be versions of what I refer to as reproductive liberty.
5. It is important to acknowledge that both forcible termination of pregnancy and forcible sterilization are also likely to involve a grave assault on the person whose reproductive liberty is being curtailed. That such assault is an inevitable consequence of attempts by the state to control reproduction greatly magnifies the harm of such attempts to curtail reproductive freedom. However, the wrong involved in these assaults is distinct from the wrong involved in the interference in the individual’s reproductive projects, which would constitute a serious harm even in the absence of these assaults.
6. The precise strength of this right is, of course, controversial. Similarly, determining who has the responsibility to provide the resources to fulfill it is a difficult task. However, these difficulties are not unique to a positive right to reproductive liberty but arise with any positive right.

7. Robertson's own insistence that procreative liberty is a merely negative right against public or private interference with reproductive projects might be called into question, given that he then goes on to list infertility as a natural barrier to reproduction which limits the freedom to procreate (1994, p. 30). Similarly, he writes of a right "to conceive" or "to become pregnant," both of which are naturally thought of as positive rather than merely negative rights.
8. Of course, other spheres of freedom may have an important role to play as well. Freedom of contract and freedom of association, for instance, both imply that couples have a *prima facie* right to contract for services they desire, including services directed toward reproduction. These important negative rights may be infringed when states regulate access to novel reproductive technologies. How serious these infringements might be and how these rights should be balanced against the social benefits that may be served by regulation of new reproductive technologies is a much larger question than I can address here. All I wish to observe here is that what is being denied to couples in cases of this sort is *not* the right to reproduce but the right to access services and make contracts necessary for them to do so.
9. It might be objected that male pregnancy need not result in a man becoming the mother of a child but only a "pregnant *father*." However, even to establish that the man who gestates a child is thereby its parent will require social and legal resolution—although, of course, his genetic contribution might mean that a man who carried his own child was a parent regardless of the role that gestation might play in determining this. Thus, in order for male pregnancy to serve as a means whereby a man might become the parent of the child he gestates, the active assistance of other people will be required.
10. Two published articles about male pregnancy (*Sydney Morning Herald* 1988; Kent 1986) mention that each instance of media publicity for the idea has led to a number of men presenting to IVF and reproductive technology clinics and requesting access to the technology required to become pregnant.
11. Although, of course, for the foreseeable future at least, any such project would require the use of donor ova provided by a woman.
12. An important class of exceptions here is male-to-female transsexuals who have had their testes removed as part of the surgical procedure involved in becoming a woman. Abdominal pregnancy may be the only mechanism whereby such individuals could become pregnant (Walters 1990) and so become a parent.
13. I wish to remain agnostic on whether this reflects a socially constructed ideology of motherhood or is a fact about human psychology as a consequence

of the importance of the mother-child bond in the evolutionary history of *Homo sapiens*. All I want to observe at this point is that this widely held belief plays an important role in justifying the medical research and funding that is currently devoted to developing and refining reproductive technologies for women.

14. Note that any technology making male pregnancy possible also will allow women to bear children even if they have no womb.
15. Indeed, the quoted phrase in the title of this paper is taken from Monty Python's *Life of Brian* (1979), where the idea of a male right to pregnancy functions as a parody of the unbridled extension of rights language more generally.
16. This is not to say that frivolous projects cannot be protected by a right, such as when the right to read out the telephone directory in a public forum is protected by the right to freedom of speech. However it *is* to deny that such projects can demand protection under such rights as a matter of course. In order to show that freedom to engage in a particular project falls within a given right, one must be able to show how it contributes to the good that right is intended to protect.
17. The changes in the social meaning and expectations of sexed bodies I have touched upon are a possible mechanism whereby such harms might occur.
18. It is also important to recognize that the same technology that might allow men to become pregnant would equally allow women to become pregnant by means of an abdominal pregnancy. This technology therefore might function as a means of allowing women who are currently unable to become pregnant because of disorders (or the absence) of the uterus to gestate a child (Walters 1990, p. C18). The arguments I have developed, which are critical of the development of this technology as a means to guarantee every man's right to have a baby, would not apply in this case. Removing limits to the reproductive freedom of women without wombs may itself be sufficient reason to develop this technology (Teresi and McAuliffe 1998; Winston 1999, p. 206).

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