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The Right to Reproduce

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The Right to Reproduce*

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The reproductive rights of women have been a central topic in feminist bioethics. The focus has been predominantly on the right *not to* reproduce, and so not to be subject to pronatalist social forces that make motherhood compulsory for women. That is the case despite many women and other members of marginalized groups experiencing *anti-natalism*, or in other words, social pressure to avoid biological reproduction.¹ Included here are people who live in poverty, have disabilities, are racialized in particular ways, or have non-normative gender identities or sexualities (Luna and Luker 2013: 354). For these groups, the right to reproduce is as important, if not more important, than the right not to reproduce. This chapter concentrates on the right *to* reproduce and considers what form it should take in feminist bioethics. The attention throughout falls on the right as a moral rather than a legal entitlement since the domain of inquiry here is ethics not law.²

The right to reproduce takes different forms in bioethics generally, some of which are oppressive to women or other social groups, and others of which are liberating. To illustrate the former, the right to reproduce has been invoked to justify the development or use of assisted reproductive technologies (ARTs) in ways that are pronatalist (i.e., that suggest childbearing is crucial to having a good life; McLeod 2010). Here, the right, grounded as it is in pronatalism,

works against efforts made within feminist bioethics to oppose the social pressure that many women feel to reproduce. The right needn't have this sort of foundation, however; it could be centered instead on freeing people from their reproductive oppression. This is essentially the form that I argue it should take in feminist bioethics.

Feminist bioethicists have done relatively little theorizing about the right to reproduce.³ Perhaps many of them assume it's just obvious that people have this right. Alternatively, they may be skeptical of it because of how it's been used in ethical debates about ARTs. Although I have expressed some skepticism about the right to reproduce myself (Botterell and McLeod 2015), in the end I think it is an important tool in the fight against reproductive injustice. Given that, I focus on how feminist bioethicists should theorize about this right, not whether they should endorse it at all. I also review what they have written about it and about topics surrounding it, such as the "stratification" of reproduction.

To give a brief outline of this chapter, it begins by discussing discriminatory anti-natalism, which is anti-natalism that targets members of social groups, either directly or indirectly. I then introduce the right to reproduce by outlining basic features of it including the fact that it is a right not simply to beget or bear children but to rear them too. I also explain in this introductory portion what is controversial about the right. The next section deals with forms of the right that are problematic from a feminist perspective because they support pronatalism, "bionormativity" (the privileging of biological families over other sorts of families; Haslanger 2009; Witt 2014), or heteronormativity. Forms of the right that are morally better from a feminist perspective are the focus of the last section. The chapter concludes by summarizing future directions that feminist bioethicists should take on the right to reproduce.

\Discriminatory Anti-Natalism

The right to reproduce is a feminist issue because reproduction is discouraged for some oppressed groups, so that some of their oppression concerns their ability to reproduce.⁴ At the same time, reproduction is actively encouraged for more privileged groups, so that their privilege extends to their ability to reproduce. Respect for the right to reproduce is therefore unequal, and the relevant inequalities mirror those that exist in society generally (e.g., racial or class-based inequalities). Feminists have written quite extensively on this “stratification” of reproduction, including on the anti-natalist social practices that cause it and the social forces that underlie these practices (see, e.g., Pande 2014, 2016; Roberts 2009; Bailey 2011; Luna and Luker 2013). Let me elaborate.

Relevant anti-natalist practices include (but are not limited to⁵) the following:

- Coerced or forced sterilization, mainly of people who are poor, racialized, trans, or intersex, or who have disabilities (Pande 2014; McGuinness and Widdows 2017; Patel 2007; Vale 2016; Honkasalo 2018; Human Rights Watch 2019);
- Unequal access to fertility treatments: for example, for those who have disabilities (Silvers and Francis 2017, NCD 2012), or who are LGBTQ+ (Mohapatra 2017);
- Welfare reform measures that deter poor people of color (Roberts 2002, 2009) or people with disabilities from bearing children; and,
- Unequal support for these people to rear their children so that they disproportionately have them removed from their care (Silvers and Francis 2017, Luna and Luker 2013, Sinclair 2007).

Dare one think that such practices are a thing of the past, there is strong evidence of them occurring in the past decade or so. For example, in Canada, coerced sterilizations of Indigenous

women were documented in a 2017 external review of the Saskatoon Health Region (Boyer and Bartlett 2017). A serious overrepresentation of Indigenous and Black children in child welfare in Ontario was also the subject of a 2018 report of the Ontario Human Rights Commission,⁶ which linked this problem to discrimination.⁷ In the United States, recent reports revealed the involuntary sterilization of racialized women in an immigration facility in Georgia (O’Toole 2020) and in prisons in California (Jindia 2020; Belly of the Beast 2020). And a 2012 report from the National Council on Disability showed that people with disabilities face serious inequality in access to assisted reproduction and in being able to maintain parental rights over their children (NCD 2012).

While marginalized people confront the above reproductive injustices, their more privileged counterparts feel social pressure to reproduce, often by any means necessary, including through high-risk or expensive methods of assisted reproduction. Included here are forms of assisted reproduction that involve hiring less privileged women—usually poor women of color—to act as surrogates (Pande 2014, 2016).⁸ These are women who themselves face anti-natalism. The disrespect for their own right to reproduce (which is again, a right to rear, not just to bear) is made even more profound by this situation.

Feminists have located the cause of discriminatory anti-natalism in oppressive stereotypes and eugenics thinking. They recognize that marginalized people are negatively stereotyped in ways that concern their ability to be good parents. Examples include stereotypes of Black women as matriarchs or welfare moms (Collins 2000), of gay men as pedophiles, of Indigenous people as lazy or violent, and of people with disabilities as helpless and vulnerable (McLeod and Botterell 2019). Such stereotypes in turn contribute to eugenics thinking, which explains, according to some feminists, why reproduction is *so* stratified between privileged and

less privileged groups. Amrita Pande uses the term “neo-eugenics” in this context, which refers to “the new subtle form of eugenics whereby the neoliberal notion of consumer choice justifies the promotion of assisted reproductive services for the rich and, at the same time[—]by portraying poor people (often in the global South) as strains on the world’s economy and environment[—]justifies aggressive anti-natalist policies for the poor” (Pande 2016: 250). In other words, factors like choice and the environment stand in for good breeding, making the eugenics subtle and more palatable to the public (see also Roberts 2009; Mills 2011; Russell 2018; Harwood 2020).

Although feminist bioethicists are keenly aware that discriminatory anti-natalism is a problem, they do not commonly frame it in terms of the right to reproduce. By contrast, the problem is interpreted in this way by feminist activists who are part of the reproductive justice movement. In striving for reproductive justice for marginalized women, these feminists insist on the right of these women to have children and parent their children (Ross 2007). Feminist bioethicists who embrace this movement tend to insist on the same thing (see, e.g., Bailey 2011; Donchin 2010, 2011; McLeod 2017b). But the question remains, how should feminists understand this right? Let me begin answering this question by outlining basic features of the right and controversies over what it protects.

The Nature of the Right and Violations of it

For feminists and non-feminists alike, there are aspects of the right to reproduce, basic ones, that are uncontroversial, and then aspects that have not yet been settled or remain contested. Included in the latter are matters that concern what the right is meant to protect and so what should constitute a violation of it. While cases of discriminatory anti-natalism are clear violations of the right to reproduce, for example, other cases are not so clear, at least from a feminist perspective.

In terms of what is uncontroversial about the right, here is a list:

- At the very least, the right to reproduce is negative meaning that it is an entitlement not to be interfered with in reproducing. The right also obligates others (e.g., the state) not to engage in such interference. Anti-natalist practices are relevant here because they often involve interference with reproduction.
- The right *could* also be positive, meaning that it would entitle people to aid in attempting to reproduce and would likely obligate the state to provide the relevant aid (e.g., in the form of access to ARTs).
- Insofar as the right is positive, it is not a right to an actual child or to use other people's reproductive labor or tissues (e.g., gametes) in trying to have a child (Overall 2012: 27). The latter type of aid is not something one could ever be entitled to.
- The right is defeasible rather than absolute, meaning that it can be defeated by moral considerations other than people's interest in reproducing or their freedom to reproduce (Overall 2012: 22). A central consideration here is children's welfare.
- The right does not entitle people to beget or bear a child without taking any responsibility for the rearing of that child (O'Neill 1979; Rulli 2016).⁹ "To reproduce" in the right to reproduce is to rear, not just to beget or bear (to use O'Neill's terminology; 1979).

This last point about rearing is revealing in terms of what the right protects. Behavior that falls under this umbrella does not include providing gametes for others' reproductive use or acting as a surrogate. People who perform these roles (in what has been called "third-party reproduction") are begetters or bearers only, and so do not exercise the right to reproduce. On the other hand, rearing the children that one begets or bears *is* included, and so the systematic removal of these children from the care of marginalized families is a violation of their right to reproduce.

Now, what about cases where people rear children without begetting or bearing them? Although there is reason to think that reproduction happens in these instances—that people *reproduce themselves* to some extent when, say, they adopt a child (see Witt 2005; Haslanger 2009)—it is doubtful that the right to reproduce protects this activity. It would be odd to insist that people exercise a right to reproduce when they become non-biological parents to a child through adoption. I have argued (with Andrew Botterell) that the right does not protect people’s ability to adopt a child, and for similar reasons (among other reasons¹⁰), it does not entitle people to become *non*-biological parents through third-party reproduction (Botterell and McLeod 2015: 198). Denying access to these means of having children therefore does not violate people’s right to reproduce (although it could violate their right to become a parent, assuming there is such a right; see Brighthouse and Swift 2014).

What the right to reproduce protects and what might violate it is not always clear. For example, could the “begetting” in reproduction involve contributing only one’s mitochondrial DNA? When people supply *only* that to the process of conceiving a child, which they can do with assisted reproduction that involves mitochondrial replacement techniques (MRTs), do they exercise a right to reproduce? Some female same-sex couples may prefer to use this method of assisted reproduction so that both partners could be genetically related to any resulting child (Cavaliere and Palacios-González 2018). If they were denied access to it (access that they do not now have¹¹) would their right to reproduce be violated? This issue, which has not been settled, has to do with what amounts to unwarranted interference with (assisted) reproduction and so with the negative right to reproduce.

A further question about the scope of the negative right to reproduce is whether or when a failure to provide people with healthy environments in which to reproduce violates this right (see

Donchin 2004). There could be a baseline that people should be able to expect in terms of how hospitable their environment is for reproduction, and whatever is unavoidable that pushes their environment below this baseline (e.g., certain forms of pollution) would constitute an unjust interference with their right to reproduce. Although important to the reproductive capacity of the most marginalized people in society, this issue has largely gone unnoticed in bioethics.

The bulk of bioethicists' attention has been on cases that concern whether people have a right to government aid that would allow them to access ARTs: cases that concern, in other words, the positive right to reproduce.¹² Should people have access to *in vitro* fertilization that is funded by public or private health insurance (see, e.g., McLeod 2017a, McTernan 2014)? Do they have a positive right to reproduce that would guarantee such access? What about financial aid for the use of other assisted reproductive methods, such as surrogacy or egg freezing? Such questions remain highly contested in bioethics.

How bioethicists understand the right to reproduce and answer difficult questions about what people are owed by virtue of having this right depends to some extent on how they justify it. For example, if they ground the right in the view that childbearing is crucial to having a good life, then they will likely view the right as positive and use it to support insurance funding for medically assisted reproduction. When I refer to what form the right to reproduce should take in feminist bioethics, I'm referring mainly to how feminists should ground it. Some ways of doing so are problematic from a feminist perspective, while other ways are better or less problematic.

Problematic Forms of the Right

The most common justifications that bioethicists give for why people are entitled to reproduce run contrary to feminist values. What they suggest about the importance of being able to reproduce, or about who should be able to reproduce, is oppressive: usually toward women,

people whose families depart from bionormative ideals of the family, or people in same-sex partnerships. The theories I have in mind are those that explain the right in terms of an interest in (biological) reproduction, or in health and the absence of disease.¹³

To justify the right to reproduce, some bioethicists make rather bold statements about people's interest in reproduction. An example is John Robertson, who is well known for his work on "procreative liberty" (1994). When discussing the right or liberty to reproduce, he claims that "being deprived of the ability to reproduce prevents one from [having] an experience that is central to individual identity and meaning in life" (1994: 24). He later qualifies this statement somewhat by suggesting that it applies to many people, but not everyone. For "many people," he writes, reproduction "is a central part of their life plan, and the most satisfying and meaningful experience they have" (24). Other bioethicists make similar claims about the value of reproduction (e.g., McMillan 2003: 313; Rosoff and Katsur 2003: 3).

Strong statements about people's interest in reproducing are troubling from a feminist perspective because they reinforce oppressive norms and structures. Consider that the people most likely to associate life's meaning and their individual identity with reproduction are women. That is true because of the dominant social message that women's lives lack meaning and their identity as women is diminished if they don't reproduce. These reproductive norms are part of the oppression of women, including marginalized women who can feel social pressure *as women* to reproduce while also experiencing social pressure not to reproduce, that is, *as marginalized women*.¹⁴ (They can face conflicting social messages, in other words, that place them in a double bind about whether to reproduce.¹⁵) With this sexist social background in view, it is doubtful that feminists would or should ground the right to reproduce in the claim that reproducing gives people purpose in their lives. They should resist such a move for the added

reason that strong statements about the value of reproduction are bionormative and heteronormative in suggesting that families with non-biological children (i.e., the families of many LGBTQ+ people) are second best.

Another justification for the right to reproduce that is deeply concerning for feminists appears in the bioethics literature about medically assisted reproduction. There, we see some authors asserting (usually without argument) that infertility interferes with health because infertility is a disease or disability. They then invoke this claim when defending the view that people have a positive right to reproduce using ARTs (e.g., Backhus and Zoloth 2007, 167). Alternatively, they imply very strongly that there is such a right by contending that access to ARTs fulfills a medical need of overcoming infertility and so should be granted to everyone who displays this need (Johnston and Gusmano 2013, 20-21; McMillan 2003; see also Brock 1996).

Unsurprisingly, most feminists would oppose this disease-focused explanation for a right to reproduce and some have done so explicitly (e.g., McLeod 2017a). Feminists have long objected to the view that infertility is a disease, and they have good reasons for doing so. Among their concerns with this understanding of infertility is that it promotes a pronatalist and bionormative culture in which many women who are infertile go to great lengths to try to reproduce.¹⁶ They climb onto the “infertility treadmill,” where they use ARTs repeatedly and often to the detriment of their physical or mental health (Harwood 2007). Grounding a right to access fertility services in the idea that infertility is a disease is problematic for this reason but also because it excludes many people from having this access, including those who are in same-sex partnerships and whose infertility is “social” rather than medical. The view therefore supports a system of access that is heteronormative.

Forms of the right to reproduce that promote heteronormativity, pronatalism, and the like are antithetical to feminism. Perhaps in ideal social contexts, where systems of oppression did not exist, grounding the right to reproduce in something like a profound interest that individuals have in reproduction would be unproblematic. (Perhaps.) But our current social contexts are far from ideal and our theorizing about the right to reproduce in feminist bioethics should reflect this fact (Silvers and Francis 2017: 182). In other words, we should take a non-idealizing approach to understanding the right to reproduce. We've already seen that this strategy rules out certain forms of the right (those that ground it in an individual interest to reproduce or avoid disease); however, it could be compatible with other forms. Let's turn to this possibility now.

Better Forms of the Right

Feminist bioethicists could alternatively ground the right to reproduce in any or some combination of the following: reproductive autonomy, bodily autonomy, an interest simply in parenting, and social justice for groups that are targeted by discriminatory anti-natalism.¹⁷ Each of these possibilities seems better—and indeed most *are* better—than the ones explored in the previous section. I'll contend that the last option is the most promising, and so future feminist research on the right to reproduce should justify the right in terms of a need for social justice.

Consider first that the right to reproduce could be grounded in our reproductive autonomy. Some philosophers argue that rights in general function to protect our autonomous choices (i.e., they defend what is called a “choice” or “will” theory of rights; see note 13). The right to reproduce would protect our will with respect to reproduction—particularly, our will *to* reproduce—if it were explained in terms of our reproductive autonomy. This option seems like it would be agreeable to feminists since they have long valued women's reproductive autonomy (although their attention has been mainly on women's freedom not to reproduce). In the end, I

think that feminists should reject this proposal, however, because it would require them to assign too much moral weight to choices in favor of reproduction (Botterell and McLeod 2015: 198). They would have to accept that being free to reproduce is *so* important that a special right should exist to safeguard this freedom. (Or else why refer to a right to reproduce but not a right, say, to start a business or become a professional dancer? Why is the freedom to reproduce more important than the freedom to do these other things?)¹⁸ Valuing reproduction to a great extent is problematic for the reasons discussed earlier, of reinforcing oppressive structures such as pronatalism and heteronormativity. It is therefore doubtful that feminists should justify the right to reproduce in terms of our reproductive autonomy.

What about the second possibility: of describing the right as a tool that protects our *bodily* autonomy, rather than our reproductive autonomy? This option could be less problematic for feminists and also useful to them in opposing anti-natalist practices that subject people to “unwanted touching or violations of the body” (e.g., forced sterilization or contraception; Botterell and McLeod 2015: 196). Clearly choices about who gets to touch our bodies (especially certain parts of our bodies) carry substantial normative weight. So, there is no worry here about assigning weight to choices that may not deserve it, as there is with choices in favor of reproduction. Different worries arise, however, with grounding the right to reproduce in our bodily autonomy. First, the right would serve no purpose that is not already served by the right to bodily autonomy (Botterell and McLeod 2015: 196). Feminists could just appeal to this other right instead to oppose violations of the body that occur with discriminatory anti-natalism; they don’t need the right to reproduce to do that. Second, the right to reproduce would be less useful than it could be in opposing discriminatory anti-natalism, since some manifestations of the latter

do not violate the bodily autonomy of members of marginalized groups. An example is the disproportionate removal of children from the care of these groups.¹⁹

A third alternative is that we ground the right to reproduce in an interest not specifically in reproducing but in parenting, or in experiencing the joys and challenges of being a parent (Overall 2012). To clarify two things immediately about this interest: 1) it is obviously not shared by everyone, although it is profound for many people and so it could be important enough to ground a right (see Overall 2012: 20-21; McLeod 2017a); and 2) it is distinct from an interest in reproducing because the experience of rearing children can be had, of course, without begetting or bearing them, as it is by adoptive parents for example.

Given that parenting can occur without reproduction, one might ask, how could an interest in parenting ground a right to reproduce? It could do that in circumstances where reproduction is the only route, or the only reasonable route, toward parenting. It would have to be the case, for instance, that for many people who have an interest in parenting, adoption is not an option or not a reasonable option. How reasonable adoption is from a feminist perspective depends on many factors, including the extent to which discriminatory anti-natalism infects child welfare and adoption systems, and the well-being of children who are permanently in the care of the state, many of whom are marginalized by virtue of their race, sexuality, gender identity, physical or mental ability, etc. Although this is not the time to delve into the politics of adoption, suffice it to say that feminist bioethicists would have to do so to some extent if they wanted to justify the right to reproduce in terms of an interest in parenting. They would also have to consider the further issue of whether the practice of parenting is equal enough for women in heterosexual partnerships that they do have a genuine interest in it. Where parenting is unequal

because of patriarchal norms, women can experience all the challenges but few of the joys of parenting. The claim that parenting is an important interest rings hollow in these circumstances.

One final possibility is that feminist bioethicists ground the right to reproduce in social justice for groups that may be—or currently are or have been—the targets of discriminatory anti-natalism.²⁰ In other words, they could design the right to be an instrument for opposing systemic barriers to the full inclusion of marginalized groups in social institutions or arrangements that allow for reproduction. Relevant arrangements include those that limit reproduction, prevent interference with reproduction, or encourage reproduction by providing support for begetting, bearing, or rearing children. Social justice demands that the social conditions for reproduction be equal for different social groups. The right to reproduce would be a tool in the arsenal of people fighting for such equality if it were based in the need for social justice.

In describing this last form that the right could take, I have hesitated to use the term ‘reproductive justice,’ as opposed to ‘social justice,’ because of how the right to reproduce is understood within the reproductive justice movement. There, it is perceived as a human right (see, e.g., Ross 2007), which makes sense only if reproduction is essential to our humanity or flourishing as human beings. Since such a view about reproduction is inimical to the kinds of feminist commitments discussed earlier (e.g., against heteronormativity), feminists should resist the idea that the right to reproduce is a human right.

Instead, they should conceive of this right as a civil right, which is a view found in the work of Anita Silvers and Leslie Francis (2017). As Silvers and Francis (2017: 190) explain, civil rights are designed to expand “possibilities for inclusion in the acceptability or attraction of particular configurations of social institutions and arrangements.” I followed this model (however loosely) when depicting the right to reproduce as a tool for promoting social justice in

the domain of reproduction. My view therefore resembles that of Silvers and Francis, although I depart from them on some matters concerning a civil right to reproduce, including whether the right is necessarily positive, meaning again that it guarantees some aid in reproducing (Silvers and Francis 2017: 196-198). While they suggest that the right *is* positive because it is meant to increase equality with respect to reproduction and some people need assistance to reproduce (e.g., some people with disabilities; 197),²¹ I believe that the right promises reproductive aid only in circumstances where social injustices promote or allow for the reproduction of some groups but not others. These include circumstances where only certain groups receive reproductive aid (e.g., subsidized fertility treatments), or where only certain groups are subject to injustices (e.g., environmental racism) that have compromised the ability of some of their members to reproduce without assistance.

The most promising angle for feminists to take on the right to reproduce is to understand it as the kind of right I've just described. Unlike some of the alternatives discussed earlier, this option does not commit us to unconditional (and ultimately pronatalist, bionormative, or heteronormative) statements about reproduction being valuable enough to ground a right. Rather, it commits us only to the conditional claim that *if* some groups have significant opportunities or freedom to reproduce, then the same should be true for other groups. By embracing this path, we also acquire a tool that should allow us to fully capture the wrongs of discriminatory anti-natalism. To do that, we need more than just a right to bodily autonomy, not only because there are anti-natalist practices that do not violate people's bodily autonomy, but because all anti-natalist practices contribute to inequality for targeted groups by deeming them unfit for reproduction and suggesting that society needs no more of their "kind." To get at *these* sorts of

wrongs, which are egregious, we need a right to reproduce that aims at promoting social justice.²²

A final point in favour of this formulation of the right is that it coheres with the meaning that reproduction can have for communities that have been subject to anti-natalism. For them, reproduction can serve “as a symbolic act of resistance to oppression.... Whereas anti-natalist oppression and reproductive injustices have deprived individuals (*qua* members of targeted social groups) of their abilities to bear children, procreation motivated by [social] justice allows for those individuals to embrace pregnancy, childbirth, and childcare as positive experiences” (Arsiradam 2018: 102; see also Sander-Staudt 2016, cited in Arsiradam). At the forefront of the theory of a right to reproduce that I’m recommending is opposition to anti-natalism, which is as it should be in feminist bioethics.

Conclusion

My main suggestion, then, for the future direction of feminist work on the right to reproduce is to develop an account of the right as a civil right that responds to social injustice in the reproductive opportunities and barriers experienced by different social groups. Inequality in this domain is deeply harmful and disrespectful, and the right to reproduce has an important role to play in opposing social forces that create this inequality. The form of the right that I’m proposing allows it to perform this function without implying that people who do not have biological children are seriously deprived.

There are certainly details to work out about a right to reproduce that aims at achieving social justice. For example, would the right protect people against age-based discrimination in the domain of reproduction? In other words, should a group defined by the advanced age of its members be included among the groups that are protected by this right?²³ A related question is

whether advanced age could be a defeater to the right, so that someone who is part of a protected group could have the right defeated in their case on grounds that their age makes them a poor candidate for parenthood (see, e.g., Parks 1999).

The question of defeaters is not one that I've focused on in this chapter, although it is important. It brings to the table literature in feminist bioethics on values that can conflict with people's desire to reproduce, such as children's welfare and the conscience of health care professionals who object to providing certain kinds of reproductive assistance (McLeod 2020). In discussing defeaters, we would also need to consider topics such as the genetic selection or enhancement of children and third-party reproduction, which are relevant to the degree or kind of equality we should strive for with the right to reproduce. Should we aim for equality of opportunity to pursue methods of assisted reproduction that are morally objectionable? Surely not, but that means views on which methods *are* objectionable will have to inform our civil rights theory of the right to reproduce.

The issues here are tricky, but feminist bioethicists should not shy away from them. The right to reproduce is invoked all the time to justify means of assisted reproduction that contribute to the stratification of reproduction (e.g., surrogacy), funding for access to ARTs that excludes certain groups (e.g., LGBTQ+ people), or the differential treatment of people who become parents via reproduction as opposed to other means (Crawford 2014; Botterell and McLeod 2015). Feminist bioethicists need a theory of the right to reproduce that allows them to object to these uses of the right, and to resist the stratification of reproduction and not reinforce norms in favor of traditional families. I believe that the theory I've outlined can meet these challenges.

Notes

¹ Most of this chapter focuses on *biological* reproduction, which arguably is not the only form of human reproduction, as I suggest below. Hereafter, unless specified otherwise, the term ‘reproduction’ refers to biological reproduction.

² Roughly, a moral right is “an entitlement that we have good reason to accept” whereas a legal right is a right that is enshrined in law (Overall 2012, 20).

³ Few mainstream bioethicists have written about it either, although do see Robertson (1994). One feminist bioethicist who has theorized a lot about this right is Christine Overall (1993, 2012).

⁴ Some might argue that the right to reproduce is a feminist issue because individual women can have their right to reproduce violated not as members of oppressed groups necessarily, but as individuals. I would respond that such violations of the right (individualized ones) are not matters of feminist concern because feminism is focused on oppression, which targets social groups. See Frye 1983 and Sherwin 1992.

⁵ Other relevant practices include mass incarceration where conjugal visits and access to assisted reproduction are severely limited (Oleson 2016, cited in Arsiradam 2018: 100). Also, genocide is a form of anti-natalism, where dominant groups assert “absolute control over the reproduction of future generations of certain peoples” (Arsiradam 2018: 98).

⁶ Indigenous children are grossly overrepresented in child welfare throughout Canada. See the Government of Canada (2020).

⁷ It pointed to discrimination in the broader society and how it has likely infected our child welfare system in Ontario.

⁸ As a result, reproduction is stratified along racial and class lines in particular, which is something that feminists writing in the 1980s predicted would happen (Corea 1985, Atwood 1985, cited in Roberts 2009). The situation is even worse than they imagined, in part because the stratification exists at a global level, with wealthy people engaging in “reproductive tourism” or travel; that is, they travel outside of their jurisdiction to consume women’s reproductive labor, usually in places where the labor is cheaper or less heavily regulated (see, e.g., Baylis 2014).

⁹ Consider that “we would not accept a man’s ‘claim to a right to the unfettered distribution of his sperm’ [Quigley 2010, 406]. Similarly, we would reject a woman’s assertion that she has a right simply to experience pregnancy and childbirth given the consequences that typically, and as a matter of fact, follow such experiences” (Botterell and McLeod 2015, 191).

¹⁰ As noted above, the right does not extend to using other people’s reproductive labor or tissues in trying to have a child.

¹¹ Currently, MRTs are clinically available only in the UK, and only then to patients with mitochondrial DNA disease (Cavaliere and Palacios-González 2018).

¹² These debates tend to ignore whether certain groups or communities may have a greater entitlement to reproductive aid than others. I’m thinking here of groups who have experienced discriminatory anti-natalism or of communities that have had their environments polluted in ways that compromise people’s reproductive capacity.

¹³ By grounding the right to reproduce in an interest, they are employing an interest theory of rights, which contrasts with a choice or will theory (see Botterell and McLeod 2015: 187-190).

¹⁴ I’m assuming here that these women have the complicated “intersectional experience” of oppression that Kimberlé Crenshaw describes (1989: 140). On the harms of pronatalism to women, see Petropanagos (2017).

¹⁵ I owe this point about a double bind to Jackie Leach Scully. Note that the double bind adds to the oppression of marginalized women. On double binds and oppression, see Frye 1983.

¹⁶ That's especially true of women who are white, but it's also increasingly true of "elite" women of color (Roberts 2009).

¹⁷ One possibility I've left off this list is to ground the right in people's well-being. In societies that are *so* pronatalist and bionormative that people can't possibly have a good life without reproducing, the right to reproduce could be explained in terms of ensuring people's well-being. Feminists should accept this form of the right for societies that are like that. At the same time, they should not (and do not) agree that all societies are like that (see, e.g., Donchin 2010, McLeod 2017b).

¹⁸ The same reasoning applies to the right *not to* reproduce and to explaining it in terms of our (negative) reproductive freedom. We would need to ask why this freedom is so important that it could ground a right, and why we couldn't settle for a more general right, such as a right to bodily autonomy. I happen to think that our negative reproductive freedom can justify a special right not to reproduce, although I won't argue for this point here.

¹⁹ I owe this second point to Catherine Mills.

²⁰ Similar theories are those that ground the right in *reparative* justice for groups that have experienced anti-natalism (Arsiradam 2018: 96-102) or in the value of non-discrimination (Overall 2012: 24). One would want to distinguish these accounts from the one I'm recommending in a full-blown defense of the latter.

²¹ More specifically, they say that the right is supposed to promote "equality in achieving what may be [an] important life goal for many—to have children," and some people need substantial assistance to achieve that end (197). But notice that this explanation is different from one stating

that the right to reproduce, as a civil right, enhances “possibilities for inclusion in the acceptability or attraction of particular configurations of social institutions and arrangements” (Silvers and Francis 2017: 190). What matters there is what those institutions and arrangements are like, not what is or may be an important life goal. I hope to avoid taking a stand on how important reproduction is in arguing that the right to reproduce should be understood as a civil right.

²² This discussion suggests that pointing to general principles in favour of social justice is not enough either. We need to be able to get at the special wrongs that occur when some groups are prevented from reproducing.

²³ Thanks to Andrew Botterell for raising this issue (in personal communication).

Related Chapters in the Handbook

[TBD]

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