

Chapter 9

PROCREATION AFTER DEATH

In the previous chapter we saw that not only that there are several legitimate forms of a family in modern society, but also that the new forms of family create different claims for familial relations. In addition, we have seen that the new procreation technologies that enable various forms of familial relations—such as IVF from donated sperm—bring also new options for having family members.

This chapter deals with such options, which involve claims made by adults to have new family members. These options became possible due to the progress, which have been recently achieved in fertility technologies, besides solving infertility problems, have also changed some of our basic concepts about family life and family relations. For example, the concepts of “reproductive autonomy” or “the right to choose” were originally mainly employed in the context of discussions of using contraception devices and having abortions, but now deal primarily with the right to assisted procreative technologies such as IVF from donated sperm. Onora O’Neill describes this change by saying that “Attention shifted from the problem of controlling unwanted fertility (although the abortion debate lost none of its steam) to that of dealing with unwanted infertility.”¹

We no longer debate the legitimacy of using contraceptive devices, and a large percentage of the public has also accepted the legitimacy of abortion. We can say that the public agenda has turned now to polemics and discussions regarding the limits and constraints of the use of new procreation technologies. For example, while we have already accepted IVF as a legitimate or even standard solution for barren parents, we still decisively reject human reproductive cloning as such a solution. However, between these extremes there are many intermediate cases

¹ O’Neill Onora. *Autonomy and Trust in Bioethics*. Cambridge University Press, Cambridge, 2002, p. 57.

where we weigh whether to support or object to requests for using assisted reproduction technologies in order to have biological offspring. In this chapter I will discuss two of such borderline cases: requests to bring a child into the world from sperm taken from a dying relative.

One of the most complicated issues relating to parenthood and family relations is the desire of parents or spouses who have lost a beloved male relative to use the deceased's sperm, in order to create a new generation of that same family. One example of this is of a man who knows that he is dying, and opts to donate his sperm so that his wife can bear his child after his death. Sperm donations may be frozen and ready for use through IVF technology even long after the donor's death. Another option, which has become possible only recently, is the harvesting of a dying man's sperm. This may be relevant after a car accident or severe injury when there is still a window of opportunity for the physician to extract viable sperm prior to death. However, this case differs from the previous one in that the seriously injured or unconscious victim is usually not able to provide informed consent.

In such cases, the moral dilemmas are much more complicated than the technical problems and present very subtle moral considerations to be weighed. Even if we set aside for a moment the issue of consent, the family structure that results from inseminating the man's sperm within the same family will obviously not follow the traditional form of two adults and their children. The variation may involve a skip-over or a confusion of generations (as in the case of grandfather-grandmother-child, or grandfather-mother-child, and so on). However, the central moral problem with regard to such use of procreation technology starts from the fact that it is important to consider children as ends unto themselves, and not as means for any other reason—no matter how understandable it is for people to want to preserve the memory of a dear departed spouse or child. But we know that parents do not only have children for “pure” motives, as “ends into themselves.” We have to admit that “children have helped to meet a variety of adults needs, as household workers or as support in old age; emotional needs, for intimacy and affection; and development needs, for maturation, for ripening of the virtues appropriate to adult life,”² as Thomas Murray reminds us. And since children are especially vulnerable to exploitation, we have to be very circumspect and prudent about any possible (even unintentional) use of children for the fulfillment of adults' interests or desires. And the most frequent of these desires, and probably the most natural one, is simply to have a child of one's own. In such cases we should consider all the interests and needs of future children, even before they are born or even before they are conceived. Thus, under certain circumstances we can question the legitimacy of bringing children into the world, and even the legitimacy of the fetus' conception. Such a discussion deals with the interests of not yet extant entities whose eligibility to have interests or needs is doubtful,

² Murray Thomas H. *The Worth of a Child*. University of California Press, Berkeley, 1996, p. 8.