

ABSTRACT

Reproductive Freedom: Some Recent Theoretical Perspectives

This dissertation presents some of the most recent theories on reproductive freedom. This issue will be analyzed from a specific starting point, which is Derek Parfit's Non-Identity Problem, as presented in his book "Reasons and Persons".

The problem posed by Parfit can be summarized as follow: since the existence of one person depends necessarily on the moment of his conception, if a persons' life is characterized by a bad start in life (and thus a smaller probability of reaching a high life quality), due to our choices which had influenced the moment of his conception, we can't really say that we damaged that person with our choice and that this outcome has been worse for him compared to the alternatives. In fact, if we had waited until we were in better circumstances to conceive a baby, so that he can have a better start in life, we would have conceived another baby, a different one, and the first one would not have ever existed.

The real alternatives for that specific person are not a bad start in life and a good one, but a bad start in life and non-existence.

In response to this statement three positions can be taken: two extremists and one intermediate.

1- **The first extremist position:** *every* life is worth living.

The Non-Identity Problem seems to justify those who sustain an extensive reproductive freedom, since every life obtained thanks to, for example, artificial insemination, would not have existed otherwise (that is, with natural fecundation), and existence is considered to be always preferable to non-existence.

2- **The intermediate position:** *not every* life is worth living.

The problem with this position lays in determining *which* lives are worth living, and which are not. It is almost impossible to draw an exact and objective line between worthy and unworthy lives, even if some impairments are so severe that many people

believe non-existence would be preferable.

In order to limit reproductive freedom, those who sustain this position should also state that a life obtained thanks to artificial insemination is such an horror that non-existence would be preferable. Since it is quite difficult to defend this affirmation, also looking at the perfectly normal lives of the artificial insemination's "children", it seems clear that is almost impossible to resolve the Non-Identity Problem for the sustainers of this position.

3- The second extremist position: no life is worth *starting*.

The second extremist position allows to condemn reproduction (N.B: *every* kind of reproduction, thus both natural and assisted) since coming into existence is always an harm. Benatar sustains his theory (not as absurd as usually it is considered to be) citing, for example, the existence of some psychological tricks that work in our minds making us believe that our lives are way better than how they really are, and that there is an evolutionary tendency towards optimism in us: pessimists tend to reproduce less. Under a shallow veil of happiness, there is an incredible amount of pain in each of our lives. Voluntarily inflicting this pain (which is, life) to another person is wrong. Therefore, according to Benatar, reproduction is always morally wrong.

The position taken in response to the Non-identity Problem affects, as we have just seen, how we consider reproductive freedom. There are two kinds of reproductive freedom: positive (the freedom of having babies) and negative (the freedom not to have babies).

The Non-Identity Problem helps to justify the first kind of reproductive freedom, but it seems to tackle the second one.

How can we justify the **interruption of pregnancy**, if we know that that specific baby won't have another chance to exist? We can't say that it's better for him if we wait for another pregnancy, because that other pregnancy will led into the world a different baby, not the one carried right now.

Apart from the second extremist position, which is too highly demanding, how can we resolve this apparent contradiction?

Usually, the theories on the abortion's moral justification tries to demonstrate that the conceived is not a person, and thus it doesn't have the *right* to live. There is not an obligation to respect his alleged interest in living. Benatar, in order to justify abortion,

distinguishes four kind of interest: functional, biotic, conscious and reflective.

Among these, only the conscious and reflective interests are morally relevant. Since the conceived apparently is conscious from around twenty-eight to thirty weeks of pregnancy, the abortion should take place before that deadline. It is important to note that the limit indicated by Benatar, roughly 200 days, more than double the one allowed by the Italian law, which is of 90 days.

Anyway, Benatar's analysis, even if useful to respond to the most common objections to abortion, does not analyze this issue from the right perspective, which is, the woman's one.

In fact, every person has the right to decide what happens to his or her body. There are two different interests in contrast when the woman wants to abort: her interest in deciding what happens to her body, and the conceived's interest (or right), alleged and undemonstrated, in living.

One could say that the interest in living is much stronger than a mere interest or right in using your body as you want: what is a little sacrifice that lasts only nine months, compared to the gift of life? The mother, one could argue, should not be so selfish; her "minor" problem, is by any terms a matter of life and death for the other one.

We could think that this line of reasoning is correct, and that this is really how we behave, and that our society is built on norms like this. Unfortunately, this is not true, as demonstrated by the following example (the so called "Thomson's violinist", after the name of his author).

Imagine this situation: you have the right blood type to save the life of a famous violinist. Without your help he will die. Therefore, the Society of Music Lovers has kidnapped you, while you were sleeping, and took you to the hospital, so that the treatment can begin. The violinist's circulatory system has been plugged to yours, and if he is unplugged, he will die. Do not worry - they say to you when you wake up the following morning- it will be only for nine months.

The interests in contrast are not different from the ones in the abortion case, but yet, most of the people who condemn the interruption of pregnancy, would say that we would be very kind if we decide to help the violinist, but we are not *obliged* to do it. We can unplug him if we want to.

Notice that we are absolutely sure that the violinist is a person and that he has an interest in living, but the pro-lifers grant more to an organism which probably does not have interests until very late in pregnancy, than to the violinist.

This example helps to demonstrate that the woman's perspective is the only one relevant in the case of abortion, since we have the right to decide what happens to our body.

Therefore, we do not have to determine whether the conceived is a person or not; considering the relationship of the conceived with the mother's body is enough. Until the two are bound, the woman has the right to decide for both. After the birth, when the existence of the child doesn't rely on his mother's body anymore, she decides only for herself. This statement allows us to reject Tooley's view, according to which infanticide is no different from abortion, since both the conceived and the infant lack reflective interest (consciously knowing to have an interest in something).

The apparent contradiction between abortion and the Non-Identity Problem is thus resolved taking a different perspective: in this case there is no need to analyze and discuss the alternatives for the conceived (existence vs. non-existence).

The last chapter of the dissertation is focused on positive reproductive freedom. Its aim is to give a moral and legal justification of the most modern practices such as in vitro fertilization, surrogate maternity, and genetic engineering. Each of the following sections will analyze and defend one of these practices.

Critics of **homologous insemination** sustain what Benatar calls the “sexual view of reproduction”, according to which reproduction has to be sexual. Every other kind of reproduction is considered to be immoral. Indeed, there is no apparent reason why this discrimination should be morally relevant.

The Catholic Church has condemned this kind of reproduction with a very similar limit, actually even more restrictive: only married couple should conceive a child, of course in a “natural” way.

The Church has the right to tell his observants what they are allowed to do, but in a secular State, it does not have the right to request that what it considers immoral becomes also illegal.

The main criticism towards **heterologous insemination** is based on the figure of the donor, which is considered to be a “third person” outside the couple. It is affirmed that having a biological father different from the legal one, causes severe psychological

disorders, which can negatively affect the child's development. Two different arguments can be sustained to reject this criticism:

- the alleged psychological disorders can be caused not only by heterologous insemination, but also by other practices legally and morally accepted, such as adoption. Therefore, we cannot say that these problems are so severe that what caused them should be banned, and at the same time tolerate practices with the same consequences. Since the fact that biological and legal parents are not the same persons is not a reason to condemn adoption, we have to accept also heterologous insemination; the alternative is to condemn the means per se, but as we have seen with the homologous insemination, it is impossible to find a logical reason for distinguishing between natural and assisted reproduction;
- the Non-Identity Problem highlights the fact that a child conceived with heterologous insemination is not harmed, since the other possible outcome would have been for him the non-existence. It is possible to say that existence is an harm to the individual, as Benatar does, but then we should refer to *every* kind of existence and thus condemn every type of reproduction.

The **surrogate pregnancy** is the carrying of the pregnancy by a woman who will not be the legal mother. There are two types of surrogate maternity, depending on whether the child is genetically related to the surrogate mother or not.

The main critics to this practice are the following three, here presented together with their objections:

- *the woman body should not be commercialized*. Notice that if we accept this view then we should condemn also the nannies that commercialize their breast;
- *the woman body should not be exploited*. We ought to remember, anyway, that surrogate pregnancy is an *agreement*, which means that the woman is completely aware of what she is doing, and she is free to decide what happens to her body. The ratio is the same of the abortion, even if the consequences are reversed.
- *The surrogate mother is actually a second mother for the child*. This is not true in the case the surrogate mother is not also the biological one, but even when she is both the natural and the genetic mother, we can apply here the same arguments that we used to defend the heterologous insemination.

Genetic engineering (or selection) is of two different kinds: medical operations or genetic enhancement, depending on whether it is used to modify (or select) pathological or non-pathological traits. This difference is very important because usually the first kind of genetic engineering, such as the pre-implantation testing, is morally accepted, unlike the second one. The term *eugenics* reminds us the horror of Hitler's plans of genetic selection and his racism. The modern genetic engineering though, is completely different: its aim is to enhance citizen's freedom and health, allowing parents to fulfill their desire to guarantee to their children an healthy life, or at least healthy genes, not to destroy their dignity as individuals or to discriminate among them.

Experiments and interventions aimed to something more than guaranteeing health, that it, enhancement of non-pathological traits, are not, in my opinion, an ethic issue (they will accelerate the process of natural selection), but a social and economical one: since these interventions will not be, probably, given for free by the national health service, there is the possibility that this economic discrimination will lead to an extreme social paralysis.

In conclusion, it is important to note that the main concern of this dissertation is the moral defense of reproductive freedom, not its legal one.. A moral defense is in a sense stronger than a legal one: we are not just saying that these practices should be tolerated; we are saying that there is nothing morally wrong with them. But even if the conclusions of this dissertation would have been the opposite (that these practices are wrong and cause an harm to someone), there would have still been a condemnation of legal restrictions of reproductive freedom: imposing to others a certain ethic is wrong, even if we are completely sure that our morality is the “right” one.

This is the difference, for example, between pro-lifers, who wish to impose their morality to every pregnant woman, and pro-choice sustainers, who simply defend their right to decide on their own, responding to their own morality.

We should never forget that the State is a legal institution, not a moral one. The State has to guarantee to his citizens the widest freedom possible. When it fails to do so, it is no longer a modern, secular and liberal State.