Reproductive freedom and risk

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It is widely recognized that one person’s freedom may be limited to prevent harm to another (non-consenting) person. It is curious, therefore, that where a right to reproductive freedom is recognized, there is considerable reticence to limit or override it in cases where reproduction harms those people who are brought into existence. I argue that this is inappropriate. If there should be no right to inflict a harm in non-reproductive contexts then there should be no right to inflict an equivalent harm in reproductive contexts. Because of the long history of bias and arbitrary discrimination in curtailments of reproductive freedom, I suggest how bias might be avoided in deciding how severe a harm must be to defeat a right to reproductive freedom.

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Do those whose reproduction stands an elevated chance of harming their offspring have a moral right to reproductive freedom? One of two conflicting biases informs many people’s answer to this question. The first bias fails to take the reproductive interests of others sufficiently seriously, whereas the second bias fails to take the interests of potential offspring sufficiently seriously. There is a way to avoid these biases. Whether this leads to an affirmative or negative answer to our question about reproductive freedom remains to be seen.

Reproductive freedom, where it exists, is a hard-won freedom. It comes after a long history of unwarranted interference in reproduction, often underpinned by various forms of pseudo-science. Policies and laws about who may and may not reproduce and about whether people must, may or may not reproduce, regularly have been the product of notorious bias. A right to reproductive freedom is a welcome corrective to this.

However, where a right to reproductive freedom has been acknowledged and entrenched, reproductive freedom has been given excessive protection. As a result, there is a great reticence even to suggest that it is ever wrong for an adult or a late adolescent (except perhaps the profoundly retarded) to reproduce. Some go so far as to say that not only is there a negative right not to have one’s reproductive choices obstructed but people are entitled to positive assistance in effecting their reproductive choices, even if they stand a high chance of producing diseased or impaired offspring.

The problem with a right to reproductive freedom that is either very expansive or very strong is that exercising it can cause considerable harm—to those children who are thereby brought into existence. This claim is not uncontroversial. Some philosophers and jurists deny that a child can be harmed by being brought into existence (Parfit, 1984). To be harmed, they say, one must be worse off than one otherwise would have been. Given that the child would not otherwise have existed, it cannot be worse off than it would have been had it not been brought into existence. Therefore, it is said, the child cannot be harmed. Although it would take a much longer work to defeat this argument decisively (Benatar, 2000, 2006), we should note here that it depends on a conception of harm that requires a comparison of two states of a person. Consider, by contrast, a conception of harm under which one is harmed if both (i) one is made badly off and (ii) one would not otherwise have been badly off. On that view of harm a child can be said to be harmed by being brought into existence if his existence is sufficiently bad.

Assuming that a child can be harmed by being brought into existence, it might be suggested that any reproduction could harm the offspring, at least because one can never be sure that one’s child will not be born diseased or impaired. However, it may be thought reasonable to distinguish between reproduction that stands an ordinary chance of producing harmed offspring and reproduction that stands an elevated chance (and a fortiori a considerably elevated chance) of doing so. For example, the offspring of carriers of certain genetic conditions, older (but still fertile) women, HIV-positive people and those who are so poor that they cannot even satisfy their own basic needs, are more likely to be born diseased, impaired or deprived, or more likely be orphaned early.

Those who would defend the right of such people to reproduce commonly do so with reference to a principle of autonomy. They argue, in other words, that given the importance of autonomy—deciding for oneself and acting in accordance with one’s decisions—it is not the place of other citizens or the state to dictate to a competent adult that he or she may not produce children.
Autonomy is indeed an important principle and should be protected from arbitrary violation. However, the principle of autonomy has a limited scope. Those committed to the freedom of competent adults to do as they please typically recognize that this freedom must be limited by the rights of others. One has a right to do as one pleases as long as what pleases one does not harm others unjustifiably or stand a great chance of doing so. One does not, for example, have a right to maim or kill people or to risk doing so by driving recklessly. Thus, it is far from clear that a right to reproductive freedom that is grounded on a principle of autonomy or liberty can include a right to reproduction where the offspring stand a high chance of being harmed. It is curious, therefore, that at least some of those who agree that we have no right to put others at significant risk of harm in non-reproductive contexts nonetheless think that we may put others at the same risk of harm in reproductive contexts. They employ a double standard in these two contexts. There is much more tolerance of harmful conduct if that conduct is also reproductive.

To be sure, there are sometimes good reasons for treating reproductive contexts differently from other contexts. It is often harder in a reproductive context to establish a causal connection between the agent’s action and the resultant offspring’s harm, and it is often much harder to prevent people from reproducing unless one countenances very serious invasions of people’s bodies and privacy. However, this is not always so. Sometimes the causal connection between action and harm is less clear in a non-reproductive context than it is in a reproductive one. For example, the harm to a fetus from maternal smoking is clearer than the harm to somebody breathing in the second-hand smoke of a smoker. Nor need a restriction on reproductive freedom always be more invasive than a restriction on other kinds of freedom. In any event, there is a difference between, on the one hand, physically preventing people from reproducing and, on the other hand, criticizing and failing to assist them. Denying that somebody has a moral right to reproductive freedom need not entail actually prohibiting or preventing them from procreating, although it is compatible with such measures.

It seems, then, that we should re-conceive the right to reproductive freedom. In determining its scope and strength, we need, if we are to avoid our biases, to make two kinds of comparison. First, we must compare procreative and non-procreative cases of harms and risks of harms. If a non-procreative action is wrong because it entails a 25% chance of infecting a non-consenting person with an incurable lethal disease, then procreation that carries the same risk of the same severity of harm must also be wrong. Thus, procreation by two people both of whom are carriers of a recessive gene for a lethal disease would be wrong (because the chances of producing affected children would be 25%). It similarly would be wrong for an HIV-positive person to procreate where the risk of transmission is similarly elevated, as it often is (The Working Group on Mother-to-Child Transmission of HIV, 1995; Garcia et al., 1999). These risks can be reduced in certain circumstances—where, for example, the mother is taking antiretrovirals. In these cases, which are much more common in developed than in developing countries, the adjusted risk must be compared with similar risks of similar harms in non-procreative contexts.

The second comparison we must make is between our own conduct, whether reproductive or not, and that of other people. It is easier to minimize the significance of others’ interests, whether they be the procreative interests of actual people or the interests of possible people we might create through our own procreative conduct. For example, a carrier of a genetic disease might focus on risk of harm, noting that the risk of harm to his or her offspring is 25%, whereas the risk of deprivation for the child of a pauper is much higher. However, a pauper might focus on the harm itself and judge that a life of economic deprivation is less bad than a life of disease and impairment (perhaps not noticing that deprivation often leads to disease). In other words, people are inclined to make self-serving judgements. This bias must be corrected by considering what judgement one would make about comparable risks of comparable harms from the conduct of others. However, merely imagining somebody else in exactly the situation that one is in is unlikely to have the required corrective effect. Thus, when one considers what judgement one would make of others, their condition should be different, even though the risks and harms are the same. If, for example, one is the carrier of a genetic disease then the comparable case one considers should not also be a genetic disease. Instead, one should consider a case where a comparable risk of a comparable harm is produced in different way.

A minimal condition, then, for sound judgements about the limits of procreative freedom for others is that these judgements must be consistent with judgements we make in non-procreative contexts and with judgements we make about ourselves. However, because it is possible to be consistently wrong, consistency is only one condition that must be met. A further condition is that of ‘reasonableness’. When this test is coupled with the consistency requirement, we may sometimes find that non-reproductive conduct that risks causing harm and that we previously judged to be wrong may actually not be wrong. More often, I suspect, we shall find that reproductive conduct that causes or risks harm and that we previously thought to be acceptable will prove to be morally wrong.

There obviously will be a grey area in which it is hard to determine whether a given risk of a specific harm is unreasonable. In such cases, one has to think more carefully while recognizing that there may be room for reasonable disagreement about what constitutes reasonableness. Yet, there will be many cases where the risk of harm is, by ordinary standards, quite clearly either reasonable or unreasonable.

The more risky and harmful procreation is, the less favourable the view we should take of it and the less tolerant we need be. Where procreation is only mildly unreasonable, we might simply desist from assisting reproduction. In worse cases, we might condemn it. In the most egregious cases, we might consider prohibiting or preventing it if this can successfully be achieved without the moral costs outweighing the benefits.

The implication of the foregoing, I suggest, is that procreation that stands a high chance of serious harm should be actively discouraged and sometimes even prevented. This may sound harsh. However, if we do not tolerate the wilful or
negligent endangerment or harm of others in other contexts, we should not indulge such conduct when it is procreative.

References