

The Inconsistency of *Not* Licensing Parents

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The proposal to license parents – that is, to require people to obtain a license, by demonstrating certain attributes and/or abilities, before they produce and possibly rear children – is usually rejected, usually quickly and loudly. I contend that this rejection reveals inconsistent thinking, to the extent that certain other regulations already in place are accepted. First, let's consider cloning, assisted insemination by donor (AID), in vitro fertilization (IVF), and surrogacy, all of which deal with the production part of being a parent. Anticipating that at some point in the near future, we will be able to clone human beings, one might also reasonably anticipate that such cloning will not be unregulated. For example, I doubt we'll allow someone to create his own private workforce or his own little army. And I suspect we'll prohibit cloning oneself for mere ego gratification. Doing it just because it's fun will certainly be illegal (and I expect it won't even be imaginable to do it "without really thinking about it," let alone "by accident"). I suspect we'll enforce some sort of quality control, such that cloned human beings shall not exist in pain or be severely "compromised" with respect to basic functioning. Actually, I suspect one will have to apply for a license and satisfy rigorous screening standards, and I assume this will include the submission, and approval, of a detailed plan regarding responsibility for the cloned human being – surely we won't allow a scientist to create it and then just leave it on the lab's doorstep one night when he leaves. And yet we accept all of these motives and behaviours when life is created in backseats and bedrooms.

In fact, the National Bioethics Advisory Commission has already recommended "regulating" cloning, to the point of outright prohibition, and it has done so because of the physical and psychological harms that may result, the "severe developmental abnormalities"[1] and the negative effects on the child's self-worth and "experience of freedom." [2] Are we not concerned about such physical and psychological harms when they may result from coital reproduction?

In our more immediate present, parenting is also regulated when it involves access to new reproductive technologies (NRTs), such as AID and IVF. The Canadian Royal Commission on New Reproductive Technologies requires, for example, that all potential sperm donors provide detailed information about their health and the health of their first-degree relatives; this information is to be reviewed by a clinical geneticist and "any indication of serious genetic anomalies or other high-risk factors" is to be grounds for disqualification.[3] They also require donors to take tests for HIV and other infectious diseases.[4] It is perplexing that these requirements apply only when sperm is to be used by someone *other* than the sperm producer's "partner." [5]

Furthermore, the Commission recommends that "a license [be] required to perform insemination at any site other than the vagina even if the recipient is the social partner." [6] Why, when the vagina is the site, is it "anything goes", but otherwise, we "proceed with care"?

The Commission also recommends that the woman seeking to become impregnated through various assistive NRTs sign a statement indicating that she has "received, read, and understood" not only information outlining "the risks, responsibilities, and implications of donor insemination...,"[7] but also the sperm screening and medical test results.[8] Why shouldn't women be required to provide such informed consent for "unassisted" reproduction as well?

Counselling should also to be provided, the Commission goes on to say, that addresses "information about alternatives ... such as ... living without children; avoidance of exposure to risk factors...; [and] some exploration of questions related to values and goals that patients may wish to take into account when making their decisions...."[9] Again, why shouldn't we also require this of those intending to "access" "old reproductive technologies"?

Regulations concerning "surrogacy" reveal a similar double standard. Susan Ince describes the various tests one needs to pass before being accepted for a gestational contract: a thorough medical exam, genetic screening if indicated, intelligence testing, and psychological evaluation. She also describes the "extensive behavioral controls over the surrogate" which include prohibitions on smoking, drinking, and illegal drugs, as well as mandatory medical, psychological, and counselling appointments[10]; "any action," she says, "that 'can be deemed to be dangerous to the well-being of the unborn child' constitutes a breach of contract." [11] Why should children born of surrogates be privileged to a higher standard of care in their creation than children not so born?

Lori Andrews has pointed out that "surrogacy contracts contain lengthy riders detailing the myriad risks of pregnancy, so potential surrogates are much better informed on that topic than are most women who get pregnant in a more traditional fashion." [12] Why do we not require this of *all* those who intend to gestate?

Next, let's consider custody, fostering, and adoption, all of which deal with the rearing part of being a parent. When a married-with-kids couple separates, the parents usually try to demonstrate to the court their parental competence in the hope of being granted custody of the children. Such competence is taken to include their knowledge of child-rearing, various personal qualities such as patience and sensitivity, their availability to the children, and so on. As long as they do not separate, however, such competence is apparently irrelevant – they are granted custody of the children, whatever their level of knowledge, skills, and commitment.

People who want to foster or adopt children must undergo similar "tests of competence," including a home visit and a background check. Roger McIntire pointedly asks what would happen if this were not so, if adoption agencies used instead a first-come, first-served basis: "Imagine some drunk stumbling up and saying 'I'll take that cute little blond-haired girl over there.'" [13] And yet that's pretty much what we currently allow with regard to non-adoptive parenting. Why do we cling to the irrational belief that biological parents are *necessarily* competent parents – in the face of overwhelming evidence to the contrary? Indeed, as Elizabeth Bartholet asks, "Why would anyone think that those who consciously plan to adopt someone else's child pose *more* of a risk than those who fall unwittingly into pregnancy?" [14]

Daycare workers and teachers – people to whom we entrust the care and nurturing of children for up to 8 hours a day – must be licensed. They must actually study full-time for months, if not years, and pass several examinations before the state allows them that responsibility. And yet someone can be responsible not only for a child's education, but for virtually everything about the child, for twenty-four hours a day until that child is six years of

age – that is, for the duration of the critical, formative years – and he or she doesn't even have to so much as read a pamphlet about child development. Why not?

Why *are* we so inconsistent – why *don't* we license parents when parenthood occurs as a consequence of sexual intercourse? Perhaps it's because we don't take parenting seriously. And yet we *do* take it seriously when it occurs *apart* from sexual intercourse, when NRTs and foster arrangements are involved.[15]

Perhaps, as Jack Westman claims, it is because parenting doesn't have any economic value in our society.[16] Surrogates and foster parents *are* paid, so perhaps it's that regulation is warranted when money is involved. However, not only does this explanation suggest we're more concerned about our money than our children, it doesn't account for our evaluations of competence when co-parents divorce (and not, for example, when they marry).

Perhaps we don't license parenting because it's considered a *private* matter. When parenting involves NRTs and fostering, however, it fails to be private – perhaps *that's* the element that warrants regulation. But it's unclear why the involvement of others should have that effect. Further, perhaps the more important point is not whether parenting *is* private, but whether it *should be* private; we used to think one spouse hitting another was a private matter, but, fortunately, we have changed our minds and now consider state involvement, including regulation, to be warranted in such cases.

Or perhaps the difference is that children are considered to be the private *property* of their parents. However, given the time, effort, and resources involved, children produced through NRTs would be even *more* so the private property of their creators – and yet there we have regulation. More importantly, especially since the anti-slavery movement, we have established good grounds for rejecting the notion of people as property.

One last possible explanation for our inconsistency is that we have a *right* to have children, and regulation would interfere with that right. But then don't the scientists cloning embryos in their labs have a right to have those children? What about the women seeking AID and IVF? What about the men seeking surrogates? What about the people wanting to adopt? If we have a right to have children, and if regulation interferes with that right, then regulation in those cases should be rejected. To be consistent, one would have to modify the rights claim to say something like "We have a right to engage in reproductive sexual intercourse and to rear the results."

But on what grounds can we claim this right? Merely *having* a capability does not entail the *right to exercise* that capability. Some argue that the right to reproduce is a natural right (see S.L.Floyd and D.Pomerantz for a critique of this view), some refer to its importance to personal well-being and identity (see Dan Brock and John A. Robertson), and some point to the need or desire to have a child (see Chadwick for a critique of this view). But whatever the nature or justification for the right to "have children," rights are seldom considered absolute: they may be overridden by competing rights – the rights of another individual or the rights of society.

So we come back to the question of whether there are relevant and significant differences between, on the one hand, parentage involving NRTs and parenting involving fostering, and on the other hand, parentage and parenting involving sexual intercourse – differences that warrant regulation on the one hand but not on the other. One possibility is that NRTs and arrangements in which the children one nurtures are not one's own biological issue are unnatural. But the biological material is natural – why does it matter which cells are involved or how they get into a uterus? Furthermore, it's unclear why "unnatural" should imply "subject to greater regulation."

Another possibility is that with NRTs and the other arrangements, people are asking for society's help, they are asking for the use of societal resources – and that's why permission is required: not only to *use* those resources, but to ensure they're not *misused*. But people reproducing without NRT assistance *also* use societal resources, most notably through the healthcare system for prenatal, natal, and postnatal care. Furthermore, in both cases, the resulting child certainly uses societal resources.

So it would seem there are no relevant and significant differences. There is, however, one relevant and significant *similarity*: the potential for serious harm to those who have a right to be free from such harm. Parentage, however it occurs, involves the creation of a life, a life that is sensitive to the various harms and goods that its creators can bring about.[17] And parenting, however it occurs, involves the development of a person who will interact with the rest of the world, taking and giving, for good and for bad. So whether framed as a consequentialist argument or as a rights argument,[18] I contend that the consideration of harm is sufficient grounds for at least some sort of parent licensing program.

Of course, consistency, wouldn't be the only benefit of licensing parents. As Joseph Fletcher says, "It is depressing, not comforting, to realize that most people are accidents." [19] And insofar as intended children are more apt than unintended children to receive love and adequate care, licensing, by requiring intentional action prior to birth (application, at least, and perhaps also the acquisition of certain capacities and competencies), could increase the odds that children are indeed loved and cared for. Licensing would have the same effect as mandatory contraception: "Our ways of thinking about pregnancy and childbearing would undergo radical change – from something one accepts or rejects when it happens to something one chooses to begin." [20]

Another benefit, insofar as a licensing program would include an educational component, is described by Philip Kitcher (who proposes education *instead* of licensing, not *as part of* licensing): "People would make ... *right* decisions because they would understand the consequences of their decisions, both for their offspring and for society." [21] (Although we'd like to believe there is a connection between education and ethics, perhaps this would apply only some of the time to some of the people.)

Yet another benefit of licensing parents is that which Gregory Kavka identifies as a benefit of genetic engineering but which could apply to *parenting* as well as *parentage*: "We might come to view parents as being more responsible for how their children turn out than we now view them." [22] Kavka goes on to describe this responsibility almost existentially, as "awesome, possibly overwhelming" [23] – perhaps that response to parenthood is overdue.

[1] National Bioethics Advisory Commission, "Cloning Human Beings" in *Flesh of My Flesh: The Ethics of Cloning Humans*. ed. Gregory E. Pence (Lanham, MD: Rowman & Littlefield, 1998), p.48.

[2] *Ibid.*, p.51.

[3] Royal Commission on New Reproductive Technologies, *Proceed with Care* (Ottawa, ON: Minister of Government Services Canada, 1993), p.476 (item 88.a).

[4] *Ibid.*, (items 88.f, h, i, j).

[5] *Ibid.*, (item 87).

[6] *Ibid.*, p.484.

[7] *Ibid.*, p.481.

[8] *Ibid.*, p.476 (item 99, f, iii).

[9] *Ibid.*, p.571.

[10] Susan Ince, "Inside the Surrogate Industry" in *Test-Tube Women*. eds. Rita Arditti, Renate Duelli Klein, and Shelley Minden. (London, UK: Pandora Press, 1984), p.105.

[11] *Ibid.*, p.106.

[12] Lori B. Andrews, *New Conceptions: A Consumer's Guide to the Newest Infertility Treatments* (New York: Ballantyne Books, 1985), p.172.

[13] Roger McIntire, "Parenthood Training or Mandatory Birth Control: Take Your Choice," *Psychology Today* (October 1973): 133, 143.

[14] Elizabeth Bartholet, *Family Bonds* (Boston: Houghton Mifflin, 1993), p.69, emphasis added.

[15] Henceforth, "NRTs" is taken to refer to cloning, AID, IVF, and surrogacy, and "fostering" is taken to refer to foster care and adoption.

[16] Jack C. Westman, *Licensing Parents: Can We Prevent Child Abuse and Neglect?* (New York: Plenum Press, 1994), p.3.

[17] And I contend that this power alone entails responsibility, by the individual and by the state (to ensure the individual meets that responsibility).

[18] A license would restrict rights *before* harm is done (that is, *in order to prevent* harm), rather than *because* harm has been done, so to some extent the proposal to license parents is subject to the "presumption of guilt rather than innocence." However, restricting one's rights need not be perceived as punishment for some as yet undemonstrated wrongdoing. Furthermore, the same preventive rationale is used for issuing other sorts of licenses, such as drivers' licenses.

[19] Joseph Fletcher, *The Ethics of Genetic Control: Ending Reproductive Roulette* (Buffalo, NY: Prometheus Books, 1988), p.36.

[20] Margaret P. Battin, "Sex & Consequences: World Population Growth vs. Reproductive Rights," *Philosophic Exchange* 27 (1997): 30.

[21] Philip Kitcher, *The Lives to Come* (NY: Simon & Schuster), 1996), p.202, emphasis added.

[22] Gregory S. Kavka, "Upside Risks: Social Consequences of Beneficial Biotechnology" in *Are Genes Us? The Social Consequences of the New Genetics*. ed. Carl F. Cranor (New Brunswick, NJ: Rutgers University Press, 1994), p.172-173.

[23] *Ibid.*, p.173.