The Ethics of Assisted Reproduction

reviewed by Susanne Gibson

In the early 1980s, following the birth of Louise Brown, the world's first 'test-tube' baby, Mary Warnock chaired the United Kingdom's Committee of Inquiry into Fertilisation and Embryology. The report of that committee (the Warnock Report) was published in 1984, informing subsequent legislation on assisted reproduction. Two decades later, Warnock revisits the ethics of assisted reproduction, taking as her starting point the question of whether there is a right to have children.

Since this is the starting point and to an extent the focus of the book, it makes sense to begin by considering Warnock's understanding of what it is to have a right. Roughly speaking, a right exists insofar as it is conferred by law. Warnock acknowledges that this adherence to legal positivism is unfashionable, but nevertheless maintains that where there is no legal right to X then while there might be a moral argument that there should be a legal right to X, until there is a change in the law, the claim can only be that X ought to be a right, not that it already is.

The question then, is whether there ought to be a right to have children. As Warnock points out, rights are likely to be claimed by those who do not already have that which they think is their due, and therefore, the right to have children is likely to be claimed by those who are unable to reproduce without assistance. In this context, the right to have children becomes a right to access to assisted reproduction. Ought there to be such a right? Here Warnock draws two distinctions. The fast is between a straightforward right of access to infertility clinics etc. and a right to infertility treatment free of charge. The second is between a right of access for those who are unable to reproduce due to a physical malfunction and a right of access for those who are unable to reproduce because they are too old, without a partner, or in a same-sex relationship.

The allocation of scarce health care resources is an ethically complex matter and Warnock largely leaves this to one side. So, other things being equal, is there a right to assisted reproduction, and if so, who has that right and on what grounds?

To begin with those who are infertile due to a physical malfunction. In line with the Warnock Report, it is argued that infertility can cause acute misery and as such doctors have a duty to respond to it.

Warnock stops short of allowing that there is or ought to be a right to assistance, but claims that 'nevertheless the infertile who want to conceive are entitled to expect that they will be given the medical assistance they need, even if they have to pay for it' (p. 54). In addition, it is not on the whole the right or duty of the doctor to turn patients away on moral or social grounds.

Insofar as Warnock is correct in thinking that doctors will respond with compassion to the needs of the infertile, then the suggestion that the question of rights need hardly arise is probably also correct. However, the weakness in Warnock's position becomes apparent when she turns to consider the issue of homosexuality and assisted reproduction.

If the infertile have no right to assisted reproduction, then neither do those who are not strictly speaking infertile but require access to techniques such as donor insemination or surrogacy because they are in a same-sex relationship. But do they have the same entitlement to treatment as the infertile? It seems that while those who are infertile are entitled to treatment on the grounds of compassion, those who are homosexual are entitled to treatment on the grounds that there are no overwhelming arguments against allowing access. However it isn't the same entitlement since Warnock claims that where resources are scarce, priority should be given to those whose infertility results from a physical malfunction. These people clearly have something wrong with them whereas those who wish to reproduce in a same-sex relationship are merely expressing a preference. Yet why shouldn't the acute misery of not being able to have a child be exactly the same in either case? Here we can see why some people might appreciate recourse to the strength of the claim that there is a right to have children, which, in the nature of what it is to have a right, is held equally by all those who hold it.

Further, we can recognise a right to have children while still taking on board Warnock's concluding comment that we should not forget 'the old sense of astonishment and gratitude that came with the birth of a child' (pp. 113-114). Warnock claims that 'gratitude is not something you feel when all you have got is what is owed' (p. 114). It is not clear to me that this is the case. After all, I can claim a right to life, and that I am owed certain things on the basis of that right, and at the same time feel an enormous sense of wonder and gratitude for the life that I have. *Making Babies is* a book of only 120 pages. Yet through those pages Warnock manages to communicate a wealth of accumulated insight into the ethics of assisted reproduction. What is interesting is that although it is clear that while in some ways there have been significant shifts in this area in the last twenty year, we are still grappling with the same fundamental philosophical issues. Aside from addressing the question of what it is to have a right, there is also an analysis of the much used but slippery concepts of the 'natural' and `unnatural'. Similarly, while IVF is now viewed much less as a sign of a 'Brave New World' and more as an ordinary means of infertility treatment, and human cloning has become in principle at least a very real possibility, we still continue to debate the question, 'what is the moral status of the human foetus?'

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