

Assisted Reproduction, the Logic of Liberalization, and Five Christian Responses

Morten Magelssen & Ole Jakob Filtvedt

Published in *Ethics & Medicine* 31(3): 159-175.

Pre-publication version

Abstract

The trend among Western liberal democracies is for increasing liberalisation of assisted reproduction, gamete donation, and gestational surrogacy. It is argued that a *logic of liberalisation* is widespread and provides a main impetus for liberalisation. The logic of liberalisation is analysed and found to consist of four widely held premises. Thereafter, five main lines of arguments available to the Christian who is critical of such liberalisation are presented and assessed. The arguments pertain to (1) the value of embryos; (2) the commodification of the child and gestation; (3) children's welfare; (4) children's rights; and (5) unacceptable consequences of the logic of liberalisation. The article ends with an evaluation of how these arguments are likely to fare in public debate.

Introduction

A growing number of children are born from assisted reproductive techniques (ARTs). Sometimes *reproductive donation*, involving either the donation of gametes (sperm or eggs) or gestational surrogacy, is employed. In the case of reproductive donation, the resulting children lack a gestational and/or genetic relationship with one or both parents.

The legal regulation of these practices varies among Western countries, but the trend is for increasing liberalisation. How far the process of liberalisation has advanced differs among liberal democracies. For instance, in the United States of America, assisted reproduction and gamete donation are largely unregulated (Glennon 2012). Most states allow surrogacy and some also enforce surrogacy contracts. In the United Kingdom, legislation and guidance on reproductive donation is much more detailed, yet practices are quite liberal when compared to many other Western countries (Glennon 2012). The Human Fertilisation and Embryology Authority (established by the Human Fertilisation and Embryology Act) allows for gamete donation in conjunction with assisted reproduction, including for single women and lesbian couples. The law does not recognize commercial surrogacy. However, altruistic surrogacy in which the gestational mother has expenses covered but does not receive payment is allowed.

In this article, we will not be presenting any new arguments either for or against assisted reproduction, gamete donation, or gestational surrogacy. Rather, this essay will attempt to treat the ethical issues pertaining to these practices as a ‘case study’ for exploring Christian participation in public debates in liberal democracies. In order to pursue this aim, we will begin by identifying four main premises that advocates of liberalisation are typically committed to, and which together constitute what we will call a *logic of liberalisation*. We will seek to demonstrate that this logic pushes towards ever new steps of liberalisation. The main contribution of this essay lies in the discussion of whether this logic of liberalisation can be interrupted if one stays within the boundaries of a Rawlsian conception of public reason. Our contention is that this is an exceedingly difficult undertaking. We have chosen to relate our discussion to a Rawlsian conception of

public reason because we believe that it is in fact highly influential on the political sphere, notwithstanding the fact that it has received critique within the philosophical and theological guilds (see, e.g., Biggar, 2011). We will also demonstrate that even if the Christian articulates his or her arguments without reference to explicit religious premises, those arguments will still be seen as highly problematic by adherents of a Rawlsian conception of public reason, since those arguments tend to presuppose a ‘thick’ vision of the human good and/or human nature.¹

In order to illustrate the issues, ideologies, and dilemmas involved in this enterprise, examples from the Norwegian debate will be used throughout, sometimes complemented with other sources. Norway is, we contend, an interesting ‘case study’. Until recently, assisted reproduction and sperm donation were offered in Norway only to heterosexual couples. Lesbian couples have been given access to these services only since 2009. Three political parties currently advocate the legalisation of egg and embryo donation, and donor conception for single women. No parties advocate altruistic or commercial surrogacy.² Until recently, Norway has imposed restrictive regulation on the field of donor conception, resisting the path of liberalisation that many Western counterparts have chosen. The fundamental restrictive attitude has often been grounded in a ‘precautionary principle’ — i.e., that the total consequences of liberalisation may

¹ To be sure, Christians respond differently to reproductive donation. One cannot therefore speak of *the Christian stance* towards reproductive donation. It is still the case that many Christians do tend to take a critical stance toward such practices, and that a critical attitude may be considered the traditional Christian attitude. Among those who are critical of reproductive donation, some would still accept assisted reproduction for married heterosexual couples, whereas some would reject all assisted reproduction (e.g., the official stance of the Catholic Church).

² Arbeiderpartiet (the Labour party), Sosialistisk venstreparti (the Socialist Left party), and Venstre (the Left party) advocate donor conception for single women, and egg and embryo donation for heterosexual and lesbian couples; the Left party discussed backing altruistic surrogacy, but in 2013 decided not to.

be impossible to predict, and that this calls for a restrictive approach (Melhuus 2012). However, recent efforts at liberalisation of donor conception have involved striking and transparent argumentation that we analyse in the following — argumentation that we contend characterises a *logic of liberalisation* that explains several of the moral, social, and legislative developments that are currently taking place, not only in Norway, but in liberal Western democracies as such.

The remainder of the article has three parts. In the first part it is claimed, with reference to the Norwegian debate, that advocates of liberalisation typically are committed to four crucial but problematic premises. Next, five lines of Christian potential responses and counter-arguments to the logic of liberalisation and its premises are discussed and assessed. In particular, the responses are evaluated in terms of whether they could be efficacious in the public square. In conclusion, we offer a prognosis and some advice for Christian participation in public debates on reproductive donation.

1. Four Typical Premises that Support Liberalisation

The logic of liberalisation, as we analyse it, is made up of the following four interrelated premises: respect for individual autonomy (A); government neutrality towards individual preferences (B); the contention that different parental constellations are equally able to give children quality care and upbringing (C); and the view that biological bonds between parents and children are of subordinate importance in the debate (D).

A. Individual Autonomy

In a liberal bioethics, *respect for individual autonomy* is given priority. The notion that individuals have a right to their own views on what constitutes *the good life*, as well as to make choices that are in line with their preferences, is the key premise in a liberal bioethics (Beauchamp & Childress 2013). The respect for individual autonomy does not only imply that persons have a positive right to shape their lives according to their own desires, it also entails a strong sense of scepticism towards all things that constrain human liberty — be it government coercion, religious and cultural traditions, or biology.

B. Government Neutrality

The principle of respect for individual autonomy leads naturally to the principle of governmental neutrality, which is a core tenet of political liberalism as a philosophical position (Rawls 1999; Rawls 1996). Political liberalism claims that, in order for citizens to coexist peacefully in a pluralist society, the state should remain neutral on questions pertaining to the good life. As H. Tristram Engelhardt Jr. points out, the bioethics that follows logically from political liberalism and government neutrality is a bioethics for ‘moral strangers’ who hold disparate views on the good life (Engelhardt 2000; Engelhardt 1996). In order to accommodate these differing moral conceptions, liberal bioethics has become *content-thin* and *procedural*, declining to pronounce substantive moral judgments, and instead more narrowly occupied with shaping the processes through which decisions are to be made.

The only instances of political constraints on individuals’ right to exercise their autonomy that tend to be regarded as legitimate are those which are aimed at preventing harm. As long as a given lifestyle or preference is not believed to be

harmful to others, it must be treated by the state as equally good and valid as other preferences. The requirement that the preference should not be harmful to others is epitomized in John Stuart Mill's famous 'harm principle': 'The only purpose for which power can be rightfully exercised over any member of a civilized community against his will, is to prevent harm to others Over himself, over his body and mind, the individual is sovereign' (Mill, *On Liberty*, 6).

When coupled with a comprehensive welfare state of the Nordic kind, the principles of governmental neutrality can lead to rather striking consequences. For instance, in 2008, a sado-masochism interest group lobbied to have sado-masochism removed from the Norwegian version of the international list of diseases, ICD-10. By granting this request, sado-masochism was 'normalised' in the sense that it is now a *preference* equal to other preferences, and thus equally entitled to state support. In 2012 the group acquired state funding to develop an information pamphlet about sado-masochism, which was to be distributed in health clinics for adolescents age 13 and up.³ This story highlights how the principle of governmental neutrality tends to deflate the traditional category of the legal-but-morally-problematic for political purposes: as long as a given practice is legal and cannot be established as unequivocally harmful, it must be given equal treatment with other practices. Such equal treatment may, as in the example, include state funding, which by implication will be perceived as legitimisation of the practice.

The Ethics Committee of the American Society for Reproductive Medicine's (ASRM) reasoning in their consensus statement on fertility treatment for

³ 'Statstøttet brosjyre lærer ungdommer sadomasochisme'. *VG Nett*, 27.07.2012. <http://www.vg.no/nyheter/innenriks/artikkel.php?artid=10059434>.

homosexuals and unmarried persons is completely in line with the paradigm of government neutrality. They state that ‘Single individuals, unmarried heterosexual couples, and gay and lesbian couples have interests in having and rearing children’. Further, since ‘There is no persuasive evidence that children are harmed or disadvantaged solely by being raised’ in these family constellations, and that ‘Moral condemnation of homosexuality or single parenthood is not itself an acceptable basis for limiting child rearing or reproduction’, then it follows that fertility treatment programs ‘should treat all requests for assisted reproduction equally without regard to marital status or sexual orientation’ (The Ethics Committee of the American Society for Reproductive Medicine, 2009, 1190-1193). In the parlance of political liberalism, the *preferences* of homosexual and unmarried persons for having children through assisted reproduction are *legitimate* in that they have not been shown empirically to cause harm, and not to treat these preferences equally with other preferences would thus constitute unjustified differential treatment, i.e., *discrimination*.

In a similar vein, a Norwegian politician (of the party Venstre) stated:

As long as the life and well-being of others are not compromised, I think the individual citizen must be allowed to choose their own direction in ethical questions to the largest possible extent The question of how one brings one’s own children into this world, is so personal and close for most of us that I think that the ethical decisions must come from ourselves, and not from a political majority in Parliament. Then the law must give us room. And the politicians must show us trust (Melby, 2012).

According to this politician, she and her colleagues should refuse to take a stand on the ethics of the diverse practices of reproductive donation. Government neutrality should prevail.

C. Equally Good Parenting

If Mill's 'harm principle' is accepted, it follows that it is crucial for the proponents of reproductive liberalisation to demonstrate that non-traditional parental constellations — male and female homosexual couples and single men and women — are equally adept as parents as are married heterosexual couples, and that *no harm* is inflicted on a child who is raised outside of married heterosexual relations.

How could this claim be assessed? What sources of evidence are considered acceptable? In the paradigm of political liberalism, acceptable sources must conform to the requirements of *public reason* (Rawls, 1997): In a pluralist society citizens hold differing moral worldviews or 'comprehensive doctrines'. However, as differing worldviews are not fully compatible, mutual agreement and understanding often cannot be reached through arguments based in particular views. The Rawlsian theory of public reason thus demands that arguments in the public square must be made without reference to religious or moral ideals that are not shared by all. This requirement gives a special place of prominence to empirical science, for it produces knowledge of correlations, causes, and effects that claim validity for all citizens regardless of their particular worldviews and ideologies.

In the absence of empirical evidence that unambiguously demonstrates that children are harmed by being raised by others than their biological parents, it

follows that politicians tend to argue that different family constellations provide equally good parenting. One Norwegian Labour politician stated simply, ‘We think that single parents can be good caregivers as well. Therefore, assisted reproduction should be available for singles’ (Thomas Breen, quoted in Arbeiderpartiet, 2012).

D. The Subordinate Importance of Biological Parent-Child Bonds

The three premises discussed so far need to be supplemented by a fourth, closely related one: that biological bonds between parents and children are of no more than moderate importance. Even if premise C is accepted, one could hold that a child still loses something of considerable value when it is deprived of biological bonds. The present premise denies that such a loss of a parent-child bond is significant or decisive. As biological bonds are given rather than chosen, they tend to restrict the autonomous choices available to individuals. When biological bonds are given subordinate importance, this radically increases the range of preferences that may legitimately be pursued and satisfied. According to premise A, such an increase is in itself good.

Proponents of donor conception do not necessarily give explicit assent to the present premise; rather, it often remains implicit. In neither the ASRM Ethics Committee statement nor the Norwegian Labour Party statements referred to are biological bonds mentioned. This omission is, it seems, telling. We take it to mean that whatever importance biological bonds may have, they are in principle trumped by the other considerations — notably, the importance of fulfilling preferences for having children (A).

2. How Might a Christian Argue in Order to Interrupt the Logic of Liberalisation?

We now turn to the question of how a Christian, critical of reproductive donation, might respond for the purpose of interrupting the logic of liberalisation. Five major counter-arguments to the premises and logic of liberalisation are identified. The arguments are discussed with a view to whether they rationally are able to rebut the logic of liberalisation, and whether they can be made within the boundaries of a Rawlsian public reason, or whether they demand that the premises of such reasoning be challenged. We are here concerned with how the arguments would fare in an idealised public square where the logic and coherence of arguments and premises rather than extra-rational influences decide the outcome.

The Moral Value of Embryos

Some argue that the human embryo is not only a human being, but is bestowed with the same moral value as children and adults (George and Tollefsen, 2008; Beckwith, 2007; Kaczor, 2011). This makes reproductive techniques in which embryos are destroyed morally problematic. *In vitro* fertilisation (IVF) often involves the production of multiple embryos, one or two of which are inserted into the uterus.⁴ ‘Spare’ embryos are either frozen for future use in reproduction, employed in stem cell research (where the extraction of the stem cells destroys the embryo), or destroyed.

If embryos have high moral value, then IVF is morally problematic when it involves the creation of spare embryos that are later destroyed. However, it is also

⁴ With ‘natural cycle’ techniques, only one egg is extracted and fertilised.

the case that the practice of IVF has developed through experimentation on — and destruction of — vast numbers of embryos. The improvement of techniques and the training of new technicians are also dependent on the creation and destruction of embryos. Therefore, it can be argued that IVF is tightly linked with the destruction of embryos; one could not have the former without the latter.

These lines of argument would lead some to reject IVF altogether, whereas others would accept IVF in the special case where ‘spare’ embryos are not created. Additionally, some would accept IVF also when any ‘spare’ embryos are frozen and *intended* for future reproductive use. Artificial insemination, on the other hand, obviously does not lead to the creation of ‘spare’ embryos, and thus escapes the criticism considered here.

These lines of arguments fare badly in a political climate dominated by political liberalism. Theories of the moral value of unborn human life are just such theories of the good that liberalism demands are kept out of public deliberation. Therefore, Christian concern for the moral value of embryos is unable to make a dent in the liberal view of assisted reproduction.

Commodification of Children and Reproduction

A common and intuitively powerful objection to reproductive donation is that the process itself tends to treat the fetus and the subsequent child as a mere commodity or artifact. Although some would argue that this critique pertains to *all* instances of assisted reproduction, also those where the commissioning party is a married couple who use their own gametes, we will confine this line of argumentation to instances of assisted reproduction where at least one third party is involved in the process of reproduction. The charge that such processes of

reproduction tend to treat the resulting child as a mere commodity, and that they therefore implicitly disrespect that child's status as a moral subject and person, could be grounded in several ways.

One could start by observing that the process of reproduction itself takes the shape of a planned, calculated, depersonalised, and highly technical enterprise with no intrinsic moral worth attached to it; rather than a spontaneous act of love, the moral worth of which transcends its potential result (see, e.g., O'Donovan, 1984). The initial reserve one could feel with detaching reproduction from its place in the relational life of man and women is only strengthened when a 'third party' enters the scene, either as donor of gametes or as surrogate, because that third party has no intrinsic moral bond with the child whom he or she contributes in making. In fact, any emotional attachment that person might experience towards the child in question would tend to be a problem rather than something valuable. The child is thus relationally detached from those who 'made' it, by virtue of the very process through which the child was 'made'. Indeed, one might argue, the very fact that one can speak of 'making' a child, instead of begetting him or her, is a subtle indication to suggest that the child is treated as something less than a person. This implies that even if the caretakers of the child which results from an assisted act of reproduction, where a third party is involved, were in fact subsequently to treat the child as the person it irreducibly is (as they no doubt typically do), this act of respect towards the child, however heartfelt and sincere, would nonetheless demand an attitude which goes 'against the grain' of the process through which the child came into being.

The charge that assisted reproduction which involves a third party tends to depersonalize the child, in that the child is treated *as if* it were a commodity, thus

precedes the question of whether or not someone is making money in the process. The key observation is rather that the reproductive process in question — planned, technical, and to some extent depersonalized — is precisely of the kind that we normally do accept that people make money off. When surrogacy is turned into business, the implicit moral problems intrinsic to this kind of reproduction only become explicit. The perceived problem at hand is thus not ‘solved’ by allowing only for altruistic surrogacy or gamete donation.

This line of reasoning presupposes through and through the premise that there is a morally relevant bond between the fetus and the child, and that even the fetus deserves to be treated in a way which respects the personhood of the child which it is in the process of becoming. The fetus has an intrinsic right to such treatment, whether or not it could be proven empirically that children who result from an allegedly depersonalising process of reproduction suffer harm later. Moreover, the argument assumes that there is a certain degree of moral worth intrinsic to the kind of activities in which we engage, and that it does make sense to ask for the symbolic moral implications of a given activity. To engage in marital intercourse in the context of interpersonal affection and love is thus not a human activity which is morally equivalent to inserting an anonymous person’s gametes into the womb of a detached surrogate mother for the purpose of making a child which is to be raised by someone else. Finally, it is also implicitly assumed that the biological bond between child and parent is morally relevant, and demands respect. In sum, it is therefore quite clear that this line of argument rests on assumptions which belong in a ‘thick’ moral vision, quite likely to be rejected by those who opt for a minimalist version of public reasoning, even if there is reason to assume that many intuitively do feel that there is something problematic in

treating a fetus in a way similar to how other *things*, say, commodities and artifacts, are treated.

The political liberalist might still respond to such intuitions by claiming either that the child is not treated as if it were a commodity when brought about through surrogacy and/or gamete donation; or, perhaps even more likely, by claiming that a ‘transient commodification’ of the child is morally irrelevant as long as no harm is inflicted. A Christian might respond, in turn, to such objections by an argument like the following. Very few would accept that there is absolutely no moral relevance entailed in the symbolic and communicative side of our human activities and relationships, and very few would accept that each and every side of human life were made subject to the rules and principles of markets. If it is possible to establish that *some* limits are required when it comes to emptying social activities of their communicative and symbolic moral worth, and that there is at least on *some* occasions reason to call for reserve before subjecting human activities to the logic and principles of markets, then it might plausibly be argued that if there is *one* instance where such limits and reserve are called for, then it must be the process whereby we enter this world, receive the gift of life, and are provided with our most fundamental relational context. If there is one occasion where humans should pause before turning an activity into an act of *making something*, then it must be the process of procreation.

Children’s Welfare

Everyone would agree that practices of assisted reproduction must be compatible with the interests of the children thereby produced. However, how is the concept of the child’s best interests to be parsed? There are, we think, two main

interpretations of this core concept. The child's best interests can be interpreted, first, in terms of *welfare*, and second, in terms of *rights*. The former interpretation is discussed presently, and the latter in the subsection to follow.

In the first section it was argued that in the climate of political liberalism and public reason, empirical science is typically called upon to provide guidance on contentious questions. So too regarding the present questions: what is the quality of the care and upbringing that a child will receive from single parents, same-sex parents, or parents who are not both biologically related to the child? Is the child's welfare compromised by facilitating such arrangements through liberalising artificial reproduction? Such questions may seem suited for empirical investigations.

What do the studies show? Individual studies have sometimes found correlations between donor conception and negative outcomes, but such findings are not consistent (Graham & Braverman, 2012; Appleby, Jennings & Statham, 2012). As the evidence is summed up in one recent review by a leading researcher in the field, 'Overall, findings suggest that the absence of a genetic or gestational connection between parents and children does not have an adverse effect on the quality of parent-child relationships or children's adjustment' (Golombok, 2013).

One may attempt to evade the discussion of the empirical studies and the conception of harm employed therein and simply state that the child born from donor conception is deprived of an important and basic *good*: care from and upbringing with both biological parents. How can a decision to deprive a child of one or both biological parents from the outset ever be compatible with the child's best interests? A problem with this move is that the supporter of donor conception may redirect focus towards the empirical findings: whether care from both

biological parents is truly an important and basic good is, it may be argued, a question that empirical science can answer for us. If the findings are that the welfare of children born from donor conception is well preserved, it becomes doubtful whether these children really have been deprived of an important good.

As long as the child's best interest is conceived of in terms of welfare and the avoidance of harm, then, the discussion will gravitate towards the findings of empirical studies. However, there are two sets of objections to the construal of the question as answerable by empirical studies. First, that the available studies *in fact* have methodological shortcomings that make them inadequate for answering the questions at stake. Second, that empirical methodologies are *inherently unable* to answer questions of the kind currently under consideration.

The first criticism will point to commonly made charges of methodological inadequacy of the studies to date — e.g., biased selection of participants (e.g., self-selection), the respondents' self-interest in a positive self-presentation, too few participants to provide reliable results, unclear hypotheses, and too short a time for follow-up (Lerner & Nagai, 2001). However, it may be countered that even with the many methodological shortcomings, if there truly were significant harms to being born from donor conception then the studies should, in sum, have been able to give some indication of this. Yet, as discussed, leading researchers in the field state that no such indication is found. In addition, even if future and methodologically more rigorous research were to discover *small* or *moderate* disadvantages for the donor conception group, it may be argued that this is not a decisive reason to prohibit donor conception. No set of parents is perfect — no potential conception, care, and upbringing are without 'disadvantages'. In addition, any disadvantage (e.g., from having only one parent, or parents of the

same sex) may well be argued to be outweighed by greater advantages in other areas, such that children born from assisted reproduction typically are highly wanted.

The second criticism claims that empirical research is inherently unable to assess factors that are vital for the child's best interest. Are there deep psychological structures relating to psychological attachment and self-image that cannot be assessed by quantitative or qualitative methodologies? Attachment and a robust feeling of personal identity remain important throughout life; are the studies really capable of discovering any negative impact to these subtle and complex phenomena? What kind of weight should we accord to the fact that familial links — not only to biological parents, but to the extended family, ancestral lines, and the narratives and meanings connected therewith — are severed from the start? (Velleman, 2005) It may be argued, therefore, that the question of whether donor conception is compatible with the child's best interest is more or less unanswerable by social and psychological science, but instead has been — problematically — operationalized as questions that *can* be assessed empirically. For several reasons, then, a discussion of the welfare of children born from donor conception quickly turns into a discussion of empirical findings. Critics of donor conception then have the two main ways outlined of attempting to undermine the weight given to the studies.

Children's Rights

The second of the two interpretations of a child's best interest depicts it in terms of rights. Children may be said to have a *right* to be raised by both biological

parents (when circumstances allow). This right is violated in donor conception, although not in surrogacy when the gametes of the social parents are used.

One objection to this argument is that since the decision to bring the child into being through donor conception is made *before* the child's existence begins, then no individual's rights are being infringed (the 'non-identity problem' – see Parfit, 2004; Hope, 2004, 42-57). However, it is still the case that a child is brought into being with the explicit intention that it is not to be raised by both biological parents. Ascriptions of rights to individuals who do not yet exist typically have corresponding formulations that apply to the decision-makers: it may be argued that no one has a right to deprive a child of the care of its biological parents from the outset. This corresponds to a duty to only practice assisted reproduction in ways which lets resulting children receive care from both biological parents.

The argument from the child's right attacks two of the four premises central to liberalisation. If the child truly has this right, then biological parent-child bonds cannot be of merely subordinate importance (D). In addition, the child's right is hard to square with the insistence that different constellations provide an upbringing of equally good quality (C). If the latter premise is true, and non-biological parents provide equally good parenting as biological parents, the defender of the child's alleged right will naturally be charged with providing a rationale or justification for such a right. And so a child's right to be brought up by both biological parents appears to be incompatible with two of the four premises crucial to the proponent of liberalisation.

The child's right may be construed as God-given, natural, or posited. If the child's right is indeed *given by God*, this turns into a powerful argument against

donor conception. However, this argument fares badly when judged in the light of political liberalism's requirement of public reason, according to which all arguments in the public square must be severed from any moral worldview or comprehensive doctrine. As state decisions must be justified for all citizens, arguments that all citizens in principle could understand, evaluate, and accept are needed, and one cannot rely on arguments rooted in moral conceptions that are not shared by every citizen. On this criterion, any explicit reference to religion ('content religiosity') or implicit reliance on religious presuppositions ('epistemic religiosity') are ruled out (Audi, 1993). An appeal to a God-given right, then, will not hold rational appeal for a supporter of political liberalism and thus neither for the typical proponent of liberalisation of assisted reproduction.

A *natural* right appears to fare no better. Arguably, a belief in natural and inherent rights presupposes metaphysical assumptions of just the controversial kind that is ruled out by the principle of public reason: a natural right seems to presuppose a transcendent legislator. Classical natural law reasoning, for instance, based on reflection on man's normative nature, would be *doubly forbidden* on the liberalist paradigm here discussed. For, first, this reasoning may appear to be epistemically religious and thus incompatible with the concept of public reason. Second, it leads to a particular, non-neutral conception of the good life, which again is incompatible with political liberalism. Even contentions that the biological parent-child relation is *natural, good, fulfilling, or fundamental* for the child may be taken to fall afoul of the requirements of public reason, because they appear to rely on 'thick descriptions' of the good-for-man which are not shared by all, and thus cannot be relied upon in public debate.

Finally, the child's right may be *posited*. The United Nations Convention on the Rights of the Child § 7.1 states that 'The child shall (...) [have], as far as possible, the right to know and be cared for by his or her parents.' Of course, questions as to how the provision should be interpreted then arise. What is a 'parent' in this context? The Convention does not specify that the parents must be the genetic parents; on the contrary, in the implementation handbook 'parents' include both 'genetic parents', 'birth parents', and 'psychological parents' (UNICEF, 2007, 105-109). The Convention was not designed to take a stand on whether donor conception is compatible with the child's right. The Convention, therefore, does not give decisive support to a right to care from one's biological parents.

The invocation of a right to receive care from one's biological parents is rhetorically powerful. Rights — in particular 'human rights' — are often trumps in today's debates. However, when the foundations of this alleged right are enquired into, they may be found to be unacceptable for the political liberalist within the paradigm of public reason.

Reductio Arguments from the Slope of Liberalisation

A final strategy for Christian critics of donor conception is to construct a *reductio ad absurdum* argument from one or more of the consequences to which the logic of liberalisation leads. The common strategy for such *reductio* arguments is to show how unpalatable consequences are more or less logically entailed by the premises of the logic of liberalisation. In general, if our premises inexorably entail a conclusion we find unacceptable, then one or more of the premises must be discarded, modified, or replaced if one is to avoid self-contradiction or the

unacceptable conclusion. The following is an attempt at teasing out the *logical* consequences entailed in the logic of liberalisation.⁵

We have attempted to show that the ‘logic of liberalisation’ is able to repel many counter-arguments to liberalisation. Indeed, we would argue that this logic pushes so powerfully in the direction of liberalisation that it offers no natural stopping points. When assisted reproduction is established as an option for heterosexual married couples, then each subsequent liberalising step on its own is small. More importantly, each step appears to be a good thing, an improvement — even obviously so — for someone who accepts the four premises of liberalisation.

The slope of liberalisation and its major milestones can be sketched in this way: if assisted reproduction is a good for heterosexual married couples, then it is a good for unmarried couples as well. It turns out that for some heterosexual couples the male is unable to produce viable sperm. In this case, third-party sperm donation overcomes the problem. The offspring is then genetically not fully the couple’s own, but if this is problematic (which it is not, according to premise D above) it is compensated for by the great good of having a child to raise as one’s own. In addition, the process is technically facile.⁶

However, if sperm donation is an option, then equality demands that egg donation must be as well. There are greater technical obstacles and slight medical risks for egg donation, but these can be overcome and do not appear to be of moral import. Some have pointed to an allegedly morally relevant difference between the

⁵ However, in practical politics there will be mechanisms that will counteract or at least slow the sliding: no legislative debate will take *all* its cues from these premises and this logic. Furthermore, political actors will need to draw the logical inferences — and accept them — for the logic to have effect.

⁶ Some of the affected males are cancer survivors which the treatment have rendered infertile. This is a group that will invoke sympathy; withholding the offer of sperm donation from this group may appear particularly cruel and unjustified.

two forms of gamete donation: egg donation, unlike sperm donation, separates gestation from genetics. But this consequence can have no force to deter the proponents of liberalisation (premise D), for, crucially, no harm in separating gestation from genetics has been established through empirical research.

If both sperm and egg donation are acceptable, then so must be the combination — i.e., embryo donation. In this case, neither of the social parents are genetically related to the child. However, as constellations wherein *one* parent is unrelated have already been accepted, it is hard to see how this further step can be morally decisive (again, premise D). Gamete or embryo donation should also be offered to homosexual couples or single men or women, as their preferences for having children are equally worthy (premises A and B), and as they are equally capable of bringing up a child (premise C).

However, one significant group is still uncatered to. Women may be unable to gestate due to uterine malformations or disease. Their hope for a child is surrogacy. In altruistic surrogacy the surrogate has her expenses covered but receives no further payment. If the woman has a friend or family member who acts as the surrogate and the couple's own gametes are used, then only the gestation is performed by a third party; in all other respects, the child is the couple's own. There can hardly be significant moral objections to this arrangement if we have already accepted the varieties of donor conception detailed above. Altruistic surrogacy may appear less, not more, controversial than practices in which gametes are provided by third parties. Some have pointed to health risks associated with pregnancies. However, the surrogate voluntarily assumes this risk, which can also be minimised by close medical supervision of the pregnancy. The logic of liberalisation must thus lead to the acceptance of altruistic surrogacy.

Altruistic surrogacy, however, will not be an option for all. Few will be fortunate enough to find a willing surrogate. In order for the remaining couples and singles to have their preferences for having a child fulfilled (premise A), the state would need to allow commercial surrogacy. There are of course many concerns about the current international surrogacy business, which is often charged with the exploitation of underprivileged women (see, e.g., Panitch, 2013). However, there is arguably nothing in commercial surrogacy as such which makes it exploitative by nature and necessity. For instance, the Californian system is often referred to as an example of a well-regulated and non-exploitative system. The premises inherent in the logic of liberalisation, then, lead to an acceptance of non-exploitative commercial surrogacy: all preferences for a child may be satisfied (premise A) and treated equally (premise B), the resulting parental constellations are all adequate (C), and the biological bonds severed are of only little or moderate importance (D).

This, then, is an outline of the slope of liberalisation if its logic is pursued to commercial surrogacy. Once one accepts the four premises A-D detailed in section 1, the logic of liberalisation implies that there is no principled way to halt the ‘sliding’ at any point down the slope. The arguments outlined in section 2 above, with the possible exception of the argument concerning the welfare of children, tend to imply a content-thick description of the human good, and will therefore conflict with the principle of government neutrality (B). It is therefore highly questionable whether any of these arguments will be able to halt the liberalisation for which the logic of liberalisation provides the impetus.

Moreover, there is reason to think that the train of liberalisation does not stop at surrogacy; indeed, it may turn out to have no natural terminus. The four

premises of liberalisation seem to condone further practices, three of which will be noted here. First, scientists are hard at work on the process of deriving gametes from somatic cells (Sparrow, 2013). If this turns out to be feasible, persons who do not produce viable gametes can have gametes for IVF produced in this way. Conceivably, embryos can be created from gametes from same-sex couples, e.g., producing children who would be the genetic offspring of two men. Viewed in light of the premises of the logic of liberalisation, these developments must be wholeheartedly welcomed. Indeed, in an article on the ethics of synthetic gametes for heterosexual couples, two bioethicists opined that ‘All decent people will celebrate this possibility’ (Testa & Harris, 2005, 164).

Second, if an artificial womb were ever to be successfully constructed, it would do away with the need for surrogate gestation. This would greatly simplify the begetting of children for male couples and single males.

Third, IVF can be combined with preimplantation genetic diagnosis (PGD) and other means of prenatal screening for abnormalities and/or positive selection for desired attributes. The logic of liberalisation does not lead inexorably to the acceptance of such practices; for this, supplemental premises — e.g., about the (lacking) moral status of early human life — are needed. However, the logic of liberalisation does provide a push in this direction through its justification of extensive instrumental and technical approaches to the creation of human life. When the language and logic of *production* is imported into the creation of new life, it may seem a matter of course that the ‘product’ should undergo the *quality control* of prenatal screening. Indeed, it may seem irrational and even immoral *not* to subject one’s ‘product’ to such screening.

The contention in this section has been that there is a very powerful logic of liberalisation at work in public debates and political processes concerning artificial reproduction. It has been sketched how acceptance of the four premises at the core of this logic paves the way for a slide down the slope of liberalisation, a slope which has no natural ending point.

If we have outlined the logical consequences of the logic of liberalisation correctly, this could form the basis of a *reduction ad absurdum* argument against the logic of liberalisation. If the premises of this logic lead to consequences judged to be unacceptable, and if current notions of what counts as public reason rule out all possible counter-arguments as irrelevant and inappropriate, this indicates that there is something fundamentally unsound about both the logic of liberalisation and the rules that allegedly should govern public reasoning in liberal democracies. However, the success of this argumentative strategy crucially depends on widespread rejection of the new ‘liberal’ practices in question. With time and consideration, such opposition may wither away amongst supporters of liberalisation.

3. How Will Christians’ Responses Fare in the Public Square?

We have attempted to present some crucial premises and lines of argument in the debate on assisted reproduction and reproductive donation, and some logical relations between these premises and lines of argument. As we now sum up our discussion with some thoughts on how the arguments may fare in the public square, we keep in mind that public debate and political decision-making always, obviously, contain other ingredients and take their shape from other influences. A

rejection of Christian lines of argument may be rational in light of one's fundamental premises; it may also be more or less irrational.

Still, we have found it worthwhile to examine the logical structure of the debates on assisted reproduction in liberal democracies. Given the four premises of the logic of liberalisation, some lines of argument seem more promising than others. The momentous importance given to empirical studies was indicated. Accordingly, attempts to question the methodological soundness of studies that are taken to support liberalisation — pointing either to the shortcomings of existing studies, or to the inherent inability of such studies to answer the most important questions — may have significant impact in the debate. Such criticisms must be taken seriously by the liberalisation advocate, since they operate on premises that he or she accepts.

The argument from the child's right to receive care from both biological parents and the *reductio* argument from the slope of liberalisation, on the other hand, attack the premises inherent in support for liberalisation. These arguments demand that the liberalisation advocate rethink his or her allegiance to the four premises. Thus, the liberalisation advocate may turn out to stick to his or her premises and reject the challenges. The appeal to alleged rights could then be seen as empty rhetoric with no ultimate justification, and the specter of the slippery slope developments could be seen simply as novelties to be welcomed or at least tolerated.

The concerns about the commodification of the child inherent in donor conception and surrogacy articulate, we believe, deep and prevalent intuitions. However, as noted, such concerns seem to spring from a thick moral vision of the kind that political liberalism will tend to dismiss as inappropriate for the public

square. However, this observation may fuel a deep objection to content-thin neutrality: it seems that the liberal paradigm just does not allow us to articulate, or is unable to accord weight to, certain objections to new biotechnological conquests of nature, even when these are, arguably, obviously morally relevant, such as in the present case (Fox, 2010). This observation should be cause for concern for liberalists: if their recipe for reconciling disparate moral views necessitates declaring morally relevant points vacuous and irrelevant, then it may come at too heavy a price. Some Christian ethicists propose alternatives to the Rawlsian principle of public reason that, while still liberal, are more inclusive (see, e.g., Biggar 2011).

To what extent are the five lines of arguments discussed ‘Christian’? In fact, as presented they all have versions that are fully secular, in the sense of having no explicitly religious content. This is a striking observation: the Christian’s main arguments against liberalisation of reproductive donation may cogently be made on secular terms. However, as has been argued, this fact is not sufficient to secure a hearing for the arguments in a public climate in which political liberalism dictates the rules. Underlying many of the arguments is a thick moral vision of, e.g., life, gestation, and kinship, a vision compatible with a Christian worldview, anthropology, and traditional ethics, but incompatible with liberalism’s insistence on neutrality.

Some central Christian arguments in this case, then, invoke thick moral visions. Even though arguments may be made in neutral terms, when made by a Christian they are underpinned by a Christian anthropology and worldview. Given the fact that Christian argumentation seems often to be ruled out as inappropriate even though it is formulated in religiously neutral terms, one might

legitimately ask if Christians should instead use their allotted time in the public square to present explicitly Christian arguments that are clearly anchored in a rich and full Christian worldview. Even though this blatantly violates the dogma of public reason and thus will be rejected by some out of hand, it will appear attractive to some.

Thus, our contention is that the Western liberal democracies can each be located at a stage on the slippery slope of liberalisation, and that there is a certain conjunction of premises — a logic of liberalisation — that fuels a further slide. We hope to have shown that it is both possible and illuminating to analyse the public debate in these terms. We have pointed to possible Christian responses, some of which will have a hard time as long as the powerful premises of the logic of liberalisation remain widely held.

REFERENCES

- Appleby, J.B., S. Jennings and H. Statham. 2012. Reproductive donation and justice for gay and lesbian couples. In: *Reproductive Donation. Practice, Policy and Bioethics* (pp. 211-230), M. Richards, G. Pennings, J.B. Appleby (eds). Cambridge: Cambridge University Press.
- Arbeiderpartiet. 2012. Åpner for eggdonasjon, Labour Party web page, 22.08.2012. <http://arbeiderpartiet.no/Aktuelt/Helse/AApner-for-eggdonasjon>, accessed 26.11.2014.
- Audi, R. 1993. The Place of Religious Argument in a Free and Democratic Society. *San Diego Law Review* 30: 677-702.
- Beauchamp, T., and J. Childress. 2013. *Principles of Biomedical Ethics*. 7th ed. New York: Oxford University Press.

- Beckwith, F.J. 2007. *Defending Life: A Moral and Legal Case against Abortion Choice*. Cambridge: Cambridge University Press.
- Biggar, N. 2011. *Behaving in Public: How to Do Christian Ethics*. Grand Rapids, MI: Wm. B. Eerdmans Publishing Company.
- Engelhardt, H.T. 1996. *The Foundations of Bioethics*. 2nd ed. New York: Oxford University Press.
- Engelhardt, H.T. 2000. *The Foundations of Christian Bioethics*. Salem, MA: M & M Scrivener Press.
- The Ethics Committee of the American Society for Reproductive Medicine. 2009. Access to Fertility Treatment by Gays, Lesbians, and Unmarried Persons. *Fertility and Sterility* 92: 1190-1193.
- Fox, D. 2010. Retracing Liberalism and Remaking Nature: Designer Children, Research Embryos, and Featherless Chickens. *Bioethics* 24: 170-178.
- George, R.P., and C. Tollefsen. 2008. *Embryo: A Defense of Human Life*. New York: Doubleday Books.
- Glennon, T. 2012. UK and US perspectives on the regulation of gamete donation. In: *Reproductive Donation. Practice, Policy and Bioethics* (pp. 90-111), M. Richards, G. Pennings, J.B. Appleby (eds). Cambridge: Cambridge University Press.
- Golombok, S. 2013. Families Created by Reproductive Donation: Issues and Research. *Child Development Perspectives* 7: 61-65.
- Graham, S., and A. Braverman. 2012. ARTs and the single parent. In: *Reproductive Donation. Practice, Policy and Bioethics* (pp. 189-210), M. Richards, G. Pennings, J.B. Appleby (eds). Cambridge: Cambridge University Press.

- Hope, T. 2004. *Medical Ethics: A Very Short Introduction*. Oxford: Oxford University Press.
- Kaczor, C. 2011. *The Ethics of Abortion: Women's Rights, Human Life, and the Question of Justice*. New York: Routledge.
- Lerner, R. and A.K. Nagai. 2001. *No Basis: What the Studies Don't Tell Us About Same-Sex Parenting*. Washington, D.C.: Marriage Law Project.
- Melby, G. 2012. Retten til egne valg [The right to one's own choices]. *Verdidebatt.no*, 24.09.2012.
<http://www.verdidebatt.no/debatt/cat12/subcat42/thread314476/>, accessed 26.11.2014.
- Melhuus, M. 2012. *Problems of Conception: Issues of Law, Biotechnology, Individuals and Kinship*. New York: Berghahn Books.
- O'Donovan, O. 1984. *Begotten or Made?* Oxford: Oxford University Press.
- Panitch, V. 2013. Global Surrogacy: Exploitation to Empowerment. *Journal of Global Ethics* 9: 329-343.
- Parfit, D. 1986. *Reasons and Persons*. Oxford: Oxford University Press.
- Rawls, J. 1996. *Political Liberalism*. New York: Columbia University Press.
- Rawls, J. 1997. The Idea of Public Reason Revisited. *U. Chi. L. Rev.*, 64: 765-807.
- Rawls, J. 1999. *A Theory of Justice*. Revised ed. Cambridge, MA: Harvard University Press.
- Sparrow, R. 2013. In Vitro Eugenics. *Journal of Medical Ethics*. Published online first 04.04.2013. doi:10.1136/medethics-2012-101200
- Testa, G., and J. Harris. 2005. Ethics and Synthetic Gametes. *Bioethics* 19: 146-166.

UNICEF. 2007. *Implementation Handbook for the Convention on the Rights of the Child*. 3rd ed. Geneva: UNICEF.

Velleman, J.D. 2005. Family history. *Philosophical Papers*, 24: 357-378.