



Ethics Bites

The Right to have babies

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This is *Ethics Bites*, with me David Edmonds

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Ethics Bites is a series of interviews on applied ethics, produced in association with The Open University.

Nigel

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David

Roughly one in seven couples in Britain has trouble conceiving a child. There are others who may want children but can't have them in the normal way – say, because they're male homosexuals, or completely infertile. IVF – In-Vitro Fertilization treatment - remains expensive and success is far from guaranteed, but it's helped millions of people. It's also opened up a Pandora's box of moral dilemmas. There have been cases of post-menopausal women having children using IVF. There is one form of surrogacy, in which women are impregnated with embryos to which they are not biologically linked. Single women, or lesbians, can choose to be impregnated with donor sperm rather than via sexual intercourse. And so on and so on. So does everybody have a right to a child, and does the state have an obligation to pay for treatment to achieve this? Mary Warnock is a philosopher who sits in the House of Lords and is the former chair of a highly influential Commission on Human Fertility and Embryo Research.

Nigel

Mary Warnock, welcome to *Ethics Bites*.

Mary Warnock

Well it's very nice to be here, so to speak.

Nigel

Now the topic we're going to focus on today is 'the right to have babies'. I wonder if you could say something about how medical advances have changed things in that respect.

Mary

The changes that there have been are, really, two. One is that people are much more open, and talk much more than they did, about infertility, and fertility; they know much more than they did. But, the second thing, of course, is that since 1978 there has been techniques starting with in-vitro-fertilization where people recognize that they can be helped to have babies if they don't conceive naturally.

Nigel

Obviously lots of people want to have children, they desperately want to have children. But it's different to start talking about a right to have children. What gives somebody a right in this area?

Mary

I don't think there can be any question of rights in this area. Because you can't have a right to something which it's impossible that you can get. And for some people it's never going to be possible to have their own biological baby – I mean they may be born without a womb. The second complication of this is that if you find yourself to be infertile and need assistance to have a baby, it's difficult to know how far your right to get that assistance goes, and this is largely a matter of expense. It's an identical problem with the problem that if there's a drug that would do you good, but it's too expensive, you can't expect to have it free, though you may have a right to pay – and I think an exactly parallel argument can be used in the case of assisted birth.

Nigel

Well in the UK most of our health care is free – do you think IVF should be free to couples who couldn't otherwise have a child?

Mary

Well at the moment people the law is that people are entitled – if they're lucky enough to live in the right district – to have one cycle of IVF on the National Health Service. But in my view it would be a very great deal better if they could have three cycles. Because actually one cycle practically never is going to be enough. So these poor people can get one free go, and then they know they've got no more to come – and they have to pay anyway if they want to persist. But one unsuccessful treatment is more depressing than no treatment at all, I think. 5 So I think it's a very bad system at the moment. And there should be at least three cycles and every national health trust should offer it.

Nigel

Do you think there's something particular about having a baby that makes this incredibly important to the couples – more than say the right to have a particular kind of drug in the treatment of an illness?

Mary

Yes I think there's something enormously important about it. I do feel very, very strongly about the desire, which I very strongly had myself, to have my own children. And I think it's not just women who feel that. I think fathers, particularly perhaps if they're brought up in the Jewish tradition, feel enormously strongly that they haven't lived if they haven't got a child because that is their form of their immortality. And that comes right down from the Jewish tradition into the Christian tradition, and I think it's very strong feeling.

Nigel

But we have strong feelings about all kinds of things, some of which the state needn't, let's say, indulge us in. I might have a need to travel but it doesn't mean the state has to facilitate my ability to travel.

Mary

No. I think it's very important to distinguish between what is a right and what is a very strong desire. 6 I absolutely agree with that. But I think in this case the desire is so strong that assistance is something which perhaps they are entitled to, up to a point. Because, after all being infertile is a malfunction, and the medical profession is there to remedy malfunctions in so far as it can.

Nigel

With some illnesses, what we're talking about is relieving pain or allowing people to lead a normal life. Here we're talking about psychological yearning – it may not be physical pain that the infertile couple feel. How could you possibly balance these two things?

Mary

I think that one must not underestimate the damage that infertility with people who really want to have children, the damage that it can do to their lives – it can break up their marriages, it can produce severe permanent depression. So it really is like trying to weigh up mental illness against physical illness, and that is always a very, very difficult thing to do. But just as a

severe mental illness may lead to suicide, so may infertility lead to suicide. I still don't think infertility is a special case, it's just a very difficult case. 7

Nigel

And, of course, it's complicated by the fact that some religious people believe that infertility treatment is just wrong.

Mary

Yes, it's difficult for me to understand this. I think what most people who object to the whole thing, root and branch, what they object to is the inevitable consequence that embryos are created that are destroyed. If you could say 'every embryo I create I will insert in somebody's uterus' I think they wouldn't mind so much.

Nigel

So that argument is focused on the idea that life is sacred, and at the moment of conception you have a living being and so it would be absolutely wrong to terminate that embryo's life?

Mary

I think that's exactly what is the basis of it; it's the sanctity of life starting from conception. But that's a very modern view actually. It really came into being only in response to the legislation that was going to go forward in the 1990 bill, starting from the 1978 report, because the pope got into a panic and realized he's got to lay down the law somehow - and decided that because you couldn't tell scientifically when life began, you had to say it began at the first possible moment, which is the moment of conception. 8 But actually that is a terribly old fashioned way to talk – the moment of conception. Because we all, really, know now that it's a gradual process when life comes into being with the joining of the sperm and the ovum.

Nigel

So let's just focus on this idea of embryos which don't live to term, as it were. Under what sort of conditions do embryos get terminated?

Mary

There are two I think. First of all we increasingly know that it's very, very undesirable to have multiple births. And if a number of embryos is created it's not really desirable to put more than two of these embryos into the uterus of the woman. But in order to produce embryos at all she has to produce more eggs than are going to be used. Supposing all those eggs fertilize, then there are going to be surplus embryos. But the second and almost more important point I think, is that in order to justify going on with treatment such as IVF and the new concept of therapeutic treatment that uses embryos, research using human embryos is absolutely essential. So those embryos that are used in research will then be destroyed, because it would be wrong to insert them into anybody's uterus, because they might have been damaged. So there's the treatment point and there's also the research point – which is very important.

Nigel

And you chaired a commission that recommended that embryo experimentation could go up to the level of 14 days – how did you fix on 14 days?

Mary

Well one thing the law needs is certainty. And therefore it seemed far better to us to fix on the number of days because everybody can count up to 14, rather than fix on any particular bit of progress of development, because embryos actually develop slightly differently, one from another, understandably. But 14 wasn't a number of days just plucked out of the air. It did actually correspond, more or less, to the normal development of the embryo – where a great number of changes start and develop very quickly after day about 15. Primarily there's something called the primitive streak which starts to show in the cells in the embryo. The cells begin to cluster together and out of that cluster starts the central nervous system and then the embryo begins to grow and develop into a foetus and have the possibility of sensation etc. Before that moment of the primitive streak the embryo couldn't have any experiences at all because they don't even have the vestige of a central nervous system. So 14 days could be

justified; it's not a particularly accurate number, but it's a precise number and that is the precision that the law needs. 9

Nigel

With these technological advances it seems now possible that all kinds of different couple arrangements are possible with homosexual couples having babies - a male homosexual with a female homosexual can have babies without having sexual intercourse; there are all kinds of arrangements. Do you think that everybody should have equal access to IVF?

Mary

I think this is a terribly difficult question. I believe that people should not be debarred from access to IVF if they are living as a homosexual couple, male or female, or if they're a single parent. But I can quite see that the National Health Service, for instance, might want to very reasonably decide to limit treatment to heterosexual couples. I can understand that. I don't think that homosexual couples or single people should be debarred legally from using these techniques but they probably would have to pay for it.

Nigel

I'm interested in that. Why would it be acceptable for the National Health Service to help heterosexual couples but not homosexual couples?

Mary

It may not be reasonable and especially as the present government has after all legitimized civil partnerships, which are equivalent to marriages, and even called marriages, between homosexual couples. But given that the National Health Service is always on the look out for ways of economizing I suppose they might simply on economic grounds say there is a class of people who are the most obvious beneficiaries – which are heterosexual couples in a long term relationship – and it's those people who, as it were, deserve free treatment. I don't know if I'd altogether defend that, but that is, I think, what they probably would say.

Nigel

It gets complicated. Because I can imagine a 16 year old girl who knew she was infertile might be at the height of her ability physically to give birth and desperately want to have a child. Now should she be allowed to have IVF treatment at 16?

Mary

Myself, I think there should be an age limit – a lower as well as an upper age limit. Having said that, I don't know that I could defend it particularly, except on grounds of containing the numbers who might come forward and apply.

Nigel

If it just comes down to economics, it's a pragmatic decision about how we use resources in the national health service, what about the cry that this is discriminating; it's discriminating against particular groups who are already discriminated against in other ways. It just compounds the discrimination. 10

Mary

I think that would very likely be the consequence. It might be that the National Health Service trusts could legally not pursue that because they'd be open to the charge of discrimination. 11 So my simple minded thought is probably legally impossible or legally very dangerous in any rate for the National Health Service. So I think there is no answer – given the discrimination laws that we have – they might have to provide these services for everybody who asked.

Nigel

And you talked earlier, very poetically, about the psychological yearning that couples, women and men, have to have children. But that's not the only reason why people want children. Some people want children for other reasons. For instance, they might want a genetically descended child because that child would then be able to give a marrow transplant to a sibling. Is that an acceptable grounds for IVF?

Mary

There have been, as you know, various notorious cases of this kind. I personally see nothing against a couple who have a child with a life-threatening illness who needs a transplant having a second child who is then screened as an embryo, and the embryo is chosen who is compatible with the first child. Now the HFEA, the authority has ruled against that as a reason for having IVF. I disagree with them actually. Their argument seems to be a very curious one - that it's not in the best interests of any child, if that child is born in order to help a sibling, and the child will not be loved for himself, but loved as a means to an end as somebody else who is loved.

Mary

I think that's a totally false dichotomy. I think the child who is born with the hope that he may be able to help his brother is doubly loved. But, of course, if it doesn't work and if the first child dies then he'll be all the more precious for having been there and tried. So I simply don't agree with that argument. But it is difficult - because if you put it in one way - 'this child is being born only because he is an organ donor', then of course it sounds terrible; he is being used as an instrument. But if he were already alive and he was being used as an organ donor then nobody would suggest you didn't love him for himself but only as a means to an end. So I don't think it's a good argument. I'd allow it.

Mary

The other thing is that you might be able to limit it to his being born as a donor of regenerative organs like blood cells or bone marrow. Because that actually wouldn't damage the new baby at all - to have some of his bone marrow taken to save his brother. Whereas if you took a kidney to save his brother then that might well be thought to be abusive of the child because you'd start him off with the defective organism. I think the regenerative donation would be the best.

Nigel

It's really interesting because heterosexual couples producing children by the time honoured natural methods don't get quizzed about their motives or how they're going to treat a child. They are free to have children. Is it a kind of discrimination against people who through no fault of their own need to use IVF that we make them jump through hoops before we give it to them?

Mary

Two things really. First of all there is discrimination. Because with natural methods nobody puts you through any hoops at all. But the second thing is too, that usually people come to have IVF only after trying lots of other infertility treatments, for none of which is it ever inquired what their motives are, or anything at all about it. And they go through this long course and suddenly they come to IVF at the end of it and suddenly they have to go through these hoops. And that must seem extraordinary really, and it is illogical I think. The other thing is that it does put clinicians into impossible positions if they have to make moral judgements about their patients. This really oughtn't to be required of them, I think.

Nigel

Is there a place then for a moral philosopher here. Some hospitals have ethicists in place; is there a serious job for a philosopher there?

Mary

Well I don't think so. I know probably all treatments in hospitals have to go through the ethics committee which usually has some philosophers who have been put out to grass on its membership. But I don't know that philosophers are much better than anybody else in making judgements about particular situations that are presented to them here and now. I can imagine some philosopher like me saying 'you must never use other people as a means to an end', and then putting a little footnote, see I.Kant External link 13 ...but I don't know if that's terribly helpful, I really don't. Probably, people who know a good deal about human nature, whether they're doctors or social workers, or whoever they are, are the best people to make these kinds of decisions.

Nigel

And yet there is often what might be called the 'Yuk factor'. The repugnance that people feel using advanced medical means to interfere with something so natural as childbirth. And it seems to me that philosophers could get a distance on that, and say, well what you're saying is this is unnatural. But there are very good arguments that have been used by many philosophers in the area of what is natural. Is there not a role for a philosopher there?

Mary

There certainly is. The question of what is unnatural is something that a philosopher is much more likely to be able to unpick than anybody else. But this isn't the sort of decision that's made when faced with a patient. Because if a philosopher, and I speak from experience, if a philosopher when faced with a committee trying to make a decision, starts talking philosophy, everybody they put down their pens and yawn and look at their watches. But I think there is a great role for philosophy in a general educational way of making people less liable to rely on the 'Yuk factor' and really think about what they're saying.

Nigel

Mary Warnock, thank you very much.

Mary

Thank you. It's been great fun.

David

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