

# THE INDIVIDUALISTIC PRINCIPLE OF “UNLIMITED PROCREATIVE LIBERTY” VS. THE ALTRUISTIC “FOURTH PRINCIPLE OF BIOMEDICAL ETHICS” – DISSENTING COMMENTS ON JOHN A. ROBERTSON’S VIEWS

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***Abstract:** Written in a colloquial style, the article is a rebuttal of Robertson’s concept of “unlimited procreative liberty”, claiming that the right to reproduce is a prima facie moral right that cannot be limited except for very good reason. Using his background in medicine and jurisprudence and his Masters in Biomedical Ethics, the author of the essay brings numerous contra-arguments, which make some “very good reasons”, corroborating his ideas with other dissenting ideas from references.*

***Key words:** general right to reproduce of human beings, extending the right to reproduce to infertile persons, fighting the infertility, procreation through non-coital means, In Vitro Fertilization, woman infected with HIV, societal cost, individualism, altruism.*

When I was a scholar in Bioethics at Case-Western Reserve University, Cleveland, Ohio from 2001 to 2002, I had to take classes at both the School of Medicine and the Law School. Once, we were given as homework a standardized case-study of a woman infected with HIV, who was mesmerized by a commercial about IVF - In Vitro Fertilization, and strongly wanted to have a child with her partner, using the promising procedure. The case was entitled “**Steve and Stella**”, and I wrote an essay on the given topic, adding a subtitle, which is the actual title of this article.

The essay was graded with 11/12 by one of my professors, but few others considered it quite odd and controversial. Odd – maybe because it was at odds with the widely acceptance of the principle of “**unlimited procreative liberty**”, and controversial – because my professors strongly believed that I was “just a student”, and therefore I should learn from them, not to exercise my academic freedom, thinking “out of the box” and conveying to them my uncanny ideas.

To the present day, after many years of reading many articles and books on Bioethics, I still feel that I have to stand by my “odd” ideas.

### I. The general right to reproduce of human beings:

Speaking about the freedom to procreate, John A. Robertson’s states: “***The right to reproduce is widely recognized as a prima facie moral right that cannot be limited except for very good reason... A person’s capacity to find significance in reproduction should determine whether one holds the presumptive right (to reproduce), though this question is often discussed in terms of whether persons with such a capacity are fit to be parents. To have a liberty interest in procreating, one should at minimum have the mental capacity to understand or appreciate the meanings associated with reproduction. This minimum would exclude severely retarded persons from having reproductive interests... However being infected with HIV... would not disqualify the one from having reproductive interests...***” (1)

According to the definition a “**prima facie right**” is a right that can be outweighed by other considerations; these rights are contrasting with **the absolute rights**, which cannot be outweighed by anything. It is quite strange for me that I am suggested to take Robertson’s statement as a mere axiom. For me, his assertion is not motivated by any pre-existing truth; it just hangs in the air, and does not make any sense.

I may have accepted a similar statement in form of a syllogism, in case Robertson would care to construct one. Because any other further considerations have to come-out in a logical succession

from this assumption, I needed to understand where this "wide recognition" of the right to reproduce as a *prima facie right* was coming from.

The term "*prima facie*" is used in modern legal English (including both Civil Law and Criminal Law) to signify that upon initial examination, sufficient corroborating evidence appears to exist to support a case, unless rebutted. Thus, constructing a tentative of rebuttal, I would imperiously ask John A. Robertson some questions:

First, the main question:

***Why, and on what grounds, the right to reproduce is recognized as a prima facie moral right?***

I would not accept but a detailed and well-documented answer, which will help me clearly understand to what such right may be connected. In the literature, from a feminist perspective, Maura Ryan describes Robertson's view in such terms as "*a historical protection of intra-marital reproductive rights and the societal interest in safeguarding family autonomy*". (2)

Well, it is quite difficult for me to accept the explanation coming from such rights and societal interests, because there were a lot of "**historically protected rights**", which are strongly rejected in our today's society (e.g., "*the male's right to dominate the woman*", or "*the parents' right to physically punish their offspring*").

Second, I may need a straight answer to the following question:

*Which type of law is generating and governing this prima facie moral right?*

*Is this prima facie moral right generated by "the natural law," as in a Darwinist approach, or by "God's law", as in a traditionalistic monotheistic religion, asking the believer to just believe and obey?*

**Third I would like to know if John A. Robertson ever asked himself this question:**

*Is his statement universally accepted and validated by all the moral systems, in all human societies?*

**If I could get answers to these questions, it may help many other people involved in reproductive ethics to better understand and accept each-other's opinions.**

## II. The right to reproduce of the NATURAL FERTILE, HIV-INFECTED WOMEN

Quoting from the so-called "unconstitutional statutes" of the states of Illinois and Missouri, which consider punishable the willful HIV transmission to a partner, John A. Robertson claims: "*Married couples with HIV could not be punished for having offspring. A child infected with HIV who has no other way to be born disease-free has not been harmed, and the avoidance of medical costs is not a compelling justification for limiting reproduction.*" (1)

Speaking about "**reproductive interest**", he states: "*One reason why reproduction is highly valued is because of the rearing, and family experiences makes it possible*". (1)

About mothers infected with HIV and seeking to nurture and rear their offspring, he says: *“Although their reproduction may be undesirable because of consequences for offspring and the welfare system, **they have substantial reproductive interest at stake**, when they will also rear their offspring. Because **reproduction with rearing is presumptively protected**, a correspondingly high level of harm will have to be shown to justify overriding their procreative freedom.”* (1)

Sorry, but I perceive a lot of “presumptive non-sense” in the previous quotation about reproductive interest at stake, and presumptive protected reproduction with rearing. If there is no legal text regulating such things, presumptions may not work similarly for all the people governed by the same set of laws, living in the same state. Thus, I would say that **it is really presumptuous and arrogant to come with such statements, based only on the conclusions one wants to demonstrate.**

Quoting John Arras (1990), John A. Roberts speaks also about the risk of passing HIV to offspring from HIV positive mothers: *“If they do, the child may die early or be maintained at high cost for many years. Even if children are not infected, the parents still are at risk of dying and leaving their children parentless. The problem of children who are parentless due to HIV is a growing social problem.”* (1)

Afterwards he adds:

*“Women with HIV may still fond procreation immensely meaningful, both because it is a prime source of meaning and validation in their social-cultural context, and because it meets their need for continuity after death looming over them... Even if particular individuals will not rear affected offspring or will not rear for long, core interests of reproduction are at stake...”* (1)

I purposely underlined the **part of the statement that looks outrageous to me**, or at least makes me uncomfortable. Just the mere reiteration of the same unsupported statement – using different words - is not going to make me understand **where the origin of the alleged right of human-beings to reproduce stems**. Maybe this is the awesome-unique moment when both Religion and Darwinism agree, but I was not aware of such consensus yet.

Robertson tries to hone his statements after further reiteration, as follows: *“In some instances the parents will not impose rearing costs on others, because they will bear the costs themselves, either directly or through insurance. However, in most cases **the persons reproducing with this risk will end up requiring large subsidies from the state for medical care and other services for their children.**”* (1)

Oops, it may sound quite auto-critical, but **his extremely tolerance** is immediately shown as he follows: *“However, any mandatory or directive program will be controversial, whatever is ethical or policy justification, because of **the perception that is singling out women who are already stigmatized**, and because of the risk that **it denigrates the worth of the children whose birth is trying to prevent**”.*

Yes, I agree, the word “controversial” is properly used here, but controversy is a two-ways road, and who stirred the controversy beginning with an axiomatic statement?

About the clinical evidence that AZT and new other drugs reduce the transmission of HIV from a pregnant woman to a fetus Gregory E. Pence recalls the toxicity of the drug for adults and possible for fetuses. *“In this regard, it can be noted that about 60% of fetuses of HIV-infected mothers will not contract the infection (although, having inherited the mother’s antibodies, a fetus may test positive for months). Thus if AZT is at all toxic to the fetus, as many as 60% of fetuses may be needlessly put at risk of harm.”* (3)

Nevertheless, Robertson’s conclusions are firmly positive for the future of the offspring and for the HIV-infected women’s desire of motherhood: *“The ability to save thousands of newborns*

from HIV infection, coupled with new federal protection of HIV-infected women under the Americans with Disabilities Act (A.D.A.), undercut arguments for HIV-exceptionalism regarding pregnant women and their babies.” (1)

### III. Right to reproduction of infertile persons

The views of John A. Robertson are so overtly liberal, allowing *to unlimitedly extending the right to reproduce to infertile persons* with the use of a simple syllogism: “*If the moral right to reproduce presumptively protects coital reproduction, then it should protect non-coital reproduction as well*”. (1)

In other words, it seems to me that Robertson is saying to us: **If you bought my previous statement as an axiom, now you have to buy my syllogism, because it makes sense, don’t you think so?**

Well, personally I don’t think so and consequently I will not agree with his last assumption at all. Nevertheless, as I previously mentioned, I could agree to buy partially his first assumption, if I could know more about its origins.

Maura Ryan stresses-out that, “*It is quite another to say that society ought to provide whatever is necessary for reproduction to occur*”. (2)

Well, her statement is true for me, but Robertson remains unflinching, despite his clear awareness of the accusations coming from other authors: “*Charges that non-coital reproduction is unethical or irresponsible arise because of its expenses, its highly technological character its decomposition of parenthood into genetic, gestational, and social components, and its potential effects on embryos, women, and offspring.*” (1)

I never said this, but I have to agree that IVF for unfertile and HIV-infected people is expensive and seems unnecessary, mainly when millions of children are in orphanages waiting to be adopted.

Maura Ryan says: “*Advocating a model where children are brought into this world chiefly for the needs of the adults involved gives too much weight to parental desires and too little to the protection of the offspring’s essential autonomy.*” (2)

She follows with a strong common-sense statement: “*We place our children at serious risk when we fail to see them first as existing for their own sakes and we allow ourselves to think of them as malleable goods.*” (2)

Personally, I perceive this statement as a **condemnation of the egoistic right to reproduce**, trying to balance it with the **concerns for the offspring**, and totally agree with it.

The theologian Hans Tiefel, cited by Gregory E. Pence writes: “*No one has the moral right to endanger a child while there is yet the option of whether the child shall come into existence*”. (3)

Gregory E. Pence explains the origin of some concerns on IVF, done on healthy but infertile people, showing the **baseline and the normality concepts of harm**. He writes: “*In wrongful life cases in the courts, it is claimed that the lives of some children are so miserable that their very existence is a tort. In wrongful birth cases, the claim are not that the child’s life is totally miserable, but simply that the child had been damaged by being born less than normal. Wrongful birth suits appeal to the normality concept. The courts have rejected wrongful life suited by assuming the baseline concept – preventing birth or killing a baby cannot be a benefit, even to prevent or end a life of total harm... According to the baseline concept, a person created by IVF cannot thereby be harmed, because otherwise that person wouldn’t have existed. According to the normality concept, IVF could harm a baby if it caused some defect of deficiency that bay would not otherwise have had.*” (3)

Wow, maybe the reader should read again this convoluted legal text, for a better understanding! However convoluted, it simply explains that **mistakes and errors may happen during the IVF procedure**, and nobody expects all the IVF procedures to come-out successful.

#### **IV. FIGHTING THE INFERTILITY OF A WOMAN INFECTED WITH HIV**

Speaking about this issue, John A. Robertson says: *“Many IVF programs... will test couples for HIV, and may refuse the procedure if one or both of the partners test positive”*. (1)

In the Notes at the end of his book, he adds: *“Such a discrimination against persons with HIV may be a VIOLATION of the Americans with Disabilities Act, because HIV status qualifies as a disability within the meaning of that law and an infertility clinic may be considered a place of public accommodation.”* (1) Also he feels the need to clarify: *“Providing IVF services to these groups would not harm children who have no other way to be born, and thus the services may ethically be provided if a program is so inclined”* (1)

He also adds in the final Notes: *“The patient groups in question may have a right against a state that denies them access to IVF or other reproductive services, but they would not have the same right to services from private actors, unless civil rights or anti-discrimination laws apply”*. (1)

Finally, he recognizes: *“Because private IVF clinics have wide discretion in selecting patients for treatment, they may in most circumstances be legally free to set the criteria for selecting patients”*. (1)

Ooh, “free to set the criteria” may also mean: “We will do the procedure only for those people who pay the high-price! There will be no procedure for HMO, but only for PPO patients”. Remember please the fourth Principle of Biomedical Ethics, dealing with the fair-share of the scarce resources. (5)

#### **V. Discussion**

[A] Having previously listed some of my objections, it is no shame to eventually admit that my view of the PROCREATIVE LIBERTY is narrower than that of John A. Robertson.

First, I want to show that **there are not yet enough places with available IVF at simply demand in the whole world**, so John A. Robertson speaks only about the opportunities offered in the USA, Canada Australia, and several European and Asian developed countries.

Second, **IT LOOKS UNACCEPTABLE TO ME TO STATE THAT THERE IS A RIGHT TO FERTILITY, BACKED-UP BY A NEW RIGHT TO FIGHT INFERTILITY AT ANY PRICE.**

Where I am coming from there is a popular rhymed say: *“If you have children – we wish them long life, if you don’t have, do not covet to have children”*.

Maybe such popular wit comes from old-times, and ought not to be enforced as a model of social morality. But wait, **it seems to me that these thoughts passed from generation to generation have the same origin** as John Robertson’s ideal of unlimited reproductive freedom – **either a natural or a God’s right.**

Maybe my judgment is impaired by some sequels, consequences of being reared in a socialist altruistic system, but if you try to discredit my opinion for such a motive, I would bring to your attention the words of **Lancelot Hogben, cited from Diane B. Paul**: *“The belief in the sacred right of every individual to be a parent is a grossly individualistic doctrine, surviving from the days when we accepted the right of parents to decide whether their children should be washed or schooled”*. (4)

When Robertson suggest that an *inherited “right to reproduce” of humans exist*, and he speaks about the *“core interests of reproduction”*, I am not sure whose interests his statements serve.

If we may accept Robertson’s statement as axiomatically true - *human reproductive rights are prima facie rights* - why is he so eagerly willing to expand the reproductive rights to people who were born without reproductive ability?

And I am asking again: *“Cui prodest? or ”Who will benefit of such rights?*

For few moments, I will try to get in Robertson’s mind, aiming to simulate his way of making judgments. I will use mainly his previously cited quotations and his skewed logic, to create an **Imaginary Codex** of rules and regulations, as follows:

*I. God or Nature made human reproduction mandatory because the couples’ offspring will perpetuate human species on the Earth.*

*II. Never try to hamper or stop any form of reproduction, no matter which good-reasons would oppose that, because it would be either against God’s laws or Nature’s laws.*

*III. If possible, help reproduction happen, despite the fact that God or Nature planned it otherwise, because of a pre-existing prima facie right and core interest of reproduction.*

*IV. For making reproduction happen, it is allowed to use extremely precise human knowledge, complicated technologies, and high-skills – despite the fact that other people refute the use of these – calling them **UNNATURAL** or **PLAYING GOD TECHNIQUES**.*

*V. No restrictions should apply to the high costs of previously mentioned technics, and no regard should be drawn to the societal claims and attitudes, because I Robertson say it is worth the price, for those who can afford it.*

*VI. If you don’t comply with the previous requirements, you can be sued on the ground infringing God’s laws, Nature’s laws, and obviously some human-made laws cherry-picked by me, including A.D.A., excepting those that I Robertson declare as unconstitutional.”*

Maybe John Robertson didn’t intent to say exactly all the above listed regulations, although it sounds so to me. **When he tries to suggest that human reproduction is a moral imperative, I have to dissent** because my views about God and Nature’s laws are inherently different from his views.

It feels that we are PRESUMPTIOUSLY ACTING AGAINST GOD’S WILL trying to “HELP NATURE”. If we don’t see the split between “LET NATURAL REPRODUCTION HAPPEN!” and “ALLOW REPRODUCTIVE TECHNOLOGIES FOR EVERYONE!” we may be really playing God.

I call all the presumptions of Robertson and his followers **the hubris of the hubris**, because at least for the moment **IVF, three parent babies and designer-babies** are available for a narrow segment of the World’s population, and still not totally risk-free.

Personally, I still see the desire to reproduce as an altruistic and morally acceptable act, even if the couple is not naturally fertile, and some exceptional measures are required to reproduce. But **if the couple cannot prove good faith and altruistic approach to the intended offspring, one should better forget about “reproduction at any cost, using special means”**.

Any other argument trying to enforce the acceptance of reproduction for infertile women infected with HIV, mainly **inducing fear of the Americans with Disability Act, would be valid only on the USA territory**. Even accepting that these much desired but expensive procedures should be performed in the USA for the infertile women with HIV, **one could not generalize this acceptance for other countries**.

**For healthy but infertile people living in poor conditions especially, such desire to bring offspring would become at least controversial.**

Supposing we overwhelm any rebuttal and we decide to fulfil the desire of the woman infected with HIV to have the IVF, and the procedure will be successful, we may still ask ourselves the following questions:

***“For how many people such a precedent will be helpful?”***

***“Will this success be a scientific victory, a medical, or a sociologic non-discriminative precedent?”***

***“Will the social justice be served here and after, when such a use of IVF for HIV-infected women will be generalized?”***

[B] Keeping those not-yet-answered questions in our minds; let's dissect a little the case of Steve and Stella. In my opinion, they are asking three different things in the same time:

- 1. To procreate through non-coital means.**
- 2. To procreate as a HIV-infected mother.**
- 3. To use AZT and other anti-retroviral agents for lowering the transmission rate of HIV infection to the fetus.**

Their hopes, corroborated with their living style may prove how much they rely exclusively on the reported successful IVF procedures.

It also looks that they share quite too optimistic views on the length of symptom-free survival of HIV-positive persons, and on the reduced rate of HIV-transmission to the fetus, using AZT and other anti-retroviral drugs.

Under the principle of using a prima facie right, they are asking for the use of three different techniques, each of them having side effects and possible failures.

**If an ethicist or a layman would bother to ask my general opinion about the case, I would say:**

The physicians who are deemed to execute those three chained-procedures, **have the right to doubt and question the right to artificially reproduce of a woman infected with HIV**.

**If the physician involved in the procedure would ask for my professional counsel, I will suggest him to do a fully disclosure of the benefits and risks.** The couple should know that according to the very IVF advertisement, which gave them so much hope, **only two although healthy women from ten who try IVF, will become mothers.**

In addition, I may try to underline the fact that **the statistics of successful IVF vary significantly according to the clinic where the procedure is made.** Thus, their monies could be better used investing in a different way for their own health-benefits.

**If the “technique-infatuated” presumptive mother would ask for my opinion**, I would talk extremely nicely to her, **using a non-directive approach**. However, I may have to explain to her the inherent risks for the future baby, complying with the non-maleficence principle in Biomedical Ethics. (5) It important to disclose that the baby may eventually grow without a mother, even if the baby will be HIV free and unharmed by the side effects of AZT and other retroviral agents.

Balancing **her over-optimistic / egoistic reasons** with the recently **inoculated altruistic reasons** about letting go the IVF, **she could be satisfied with her mere intent “to do everything possible” to become a mother**, which may look quite commendable if not stubbornly achieved at any price paid by the society and the new-born.

And, supposing Steve and Stella already have the lump-sum money to pay for these procedures, the insurance may not provide any help, and I believe there are still other decision factors.

In a state clinic, the request could be seen too hazardous and too expensive to be performed, prioritizing against other more feasible things for the couple’s benefit or for the benefit of other couples (e.g., adopting a new born baby or a child).

In a private clinic their request could be rejected, on a list of different grounds, including that of the security for the personnel.

No argument was enough convincing to me up until now - neither Robertson’s assumptions, nor the threat with A.D.A.’s infringement – that a HIV-infected mother has a right to artificially-reproduce, against all the upper listed risks, according the USA state laws.

Notwithstanding, I am afraid that my virtual counsel will not be heard by anyone, and obviously may not be followed. Somehow I felt that I am wasting all my logic, common-sense and jurisprudence knowledge, because the tribulations resulted from these in my essay may be willfully ignored. I feel the situation is similar with that suggested by an old Latin say, my father used frequently: *“Montes parturent, nascetur ridiculus mus!”* meaning in English: **“The mountains went in labor, and delivered a ridiculous mouse!”**

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