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## A Challenge to Progressives on Choice

by SAMUEL BERGER

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The potential for new biotechnologies to have far-reaching societal consequences presents a novel challenge to the progressive belief that people have an unrestricted right to make any and all of their own reproductive choices. Previous scientific advances, such as the sonogram, have altered the abortion debate by affecting public opinion about the moral status of the fetus; but these earlier technologies have not substantially weakened the support among progressives for unrestricted reproductive choice. That soon may change.

Current technologies such as pre-implantation genetic diagnosis [PGD] and sperm sorting--and possible future technologies such as cloning and germline modification--will enable parents to make decisions that greatly affect gender balance, disease burdens, genetic diversity and the genes of humans themselves. In order to address these new possibilities adequately, we will need to find a way to regulate some choices while maintaining existing reproductive freedoms.

The shifting parameters of reproductive choice will oblige Americans of all political persuasions--but above all progressives--to revisit some of our most dearly held tenets. Support for reproductive choice is grounded in the notion that the choices themselves are private matters that are the individual's alone. In *On Liberty*, for example, a classic foundational work of liberal political theory, John Stuart Mill outlined two types of actions: self-regarding acts, which largely affect only the individuals carrying them out, and other-regarding acts, which substantially affect people in addition to the acting individual. Mill argued that while regulation or prohibition was appropriate for other-regarding acts, it was not for self-regarding acts.

Americans have largely adopted this distinction, regulating choices only when they affect others in the larger community. Nowhere is this clearer than in the debate around abortion, where the fundamental question is whether a person thinks the choice affects others. The extent to which reproductive choices are self-regarding or other-regarding--

and thus the extent to which they should be regulated--revolves around one's view of the moral status of the embryo or fetus.

Most progressives consider abortion and other reproductive choices self-regarding acts, because the fetus or embryo is not seen as a separate person with equal and competing interests. As NARAL Pro-Choice America describes them, reproductive choices should not be regulated, because they are private decisions women make with "their families, their physicians, and their faith."

Biotechnological innovations, however, are quickly shifting certain reproductive decisions from matters of private choice to ones of public concern, regardless of the moral status of fetuses and embryos. Parents in the twenty-first century will have the ability to control the genetic makeup of their children in ways that were unthinkable fifty years ago. The choices they make will thus significantly affect the structure of society. As progressives, we must acknowledge the new challenges posed by these reproductive technologies and, when necessary, craft policies to limit their potentially harmful impact.

### **Choosing What Children to Have**

Already, people undergoing in vitro fertilization (IVF) can use pre-implantation genetic diagnosis to choose which embryos are implanted based on their genetics, screening potential embryos for debilitating diseases or choosing "savior siblings" who have the genetic makeup necessary to be compatible donors for a sick child. They can also use PGD to select the sex of their child, or use a less effective technique that involves sorting the sperm before artificial insemination or IVF.

Through IVF, future parents will theoretically be able to select embryos for other characteristics, such as height or hair color. While many assisted reproductive technologies, including PGD, are currently expensive and infrequently used, improvements will likely reduce expense and increase demand as parents can have more control for less cost.

The increasing use of PGD to choose children's characteristics could greatly affect disease rates in society, as well as our conception of responsibility for those diseases. Currently, there is significant support for using the procedure to prevent implanting embryos with early onset, life-threatening diseases. But what about using it to choose children with or without a less debilitating condition?

Fertility clinics currently allow parents to screen embryos for Down syndrome; a British couple is screening their embryo for early-onset Alzheimer's; and a London hospital has proposed discarding male embryos to prevent autism, which is more prevalent among males, in at-risk families. Some parents with deafness or dwarfism have suggested that they want to purposefully select children with a similar condition.

Individual choices could thus have a huge effect on the structure of our healthcare system, as well as the market for cures--there would be little incentive for pharmaceutical

companies to develop drugs to treat conditions all but eliminated by PGD, particularly since wealthier families will likely be the first to have widespread access to this expensive technology. And these choices could also affect the availability of services for children with these disabilities or illnesses. Which conditions are acceptable to screen for, as well as whether and how screening should be encouraged, are questions that must be answered collectively.

PGD and sperm sorting also offer the opportunity for easy and efficient sex selection of children. Results of a recent survey suggest that 42 percent of U.S. fertility clinics have already used PGD to do so for non-medical reasons. While these actions may seem harmless, they have the potential to lead to dangerous gender imbalances: an overabundance of either males or females could have tremendous effects on marriage, sex-trafficking, crime rates and stability.

Countries such as India and China already have significant imbalances created through abortion and infanticide, and increased access to ultrasound in China has further exacerbated the imbalance. PGD and sperm sorting will make the process easier and more socially acceptable because parents can make the decision to select a specific sex before becoming pregnant.

Future use of PGD, however, may even allow parents to select for more specific traits such as height, hair color or body type as parents seek to have the "perfect child." These choices could dangerously narrow the gene pool--with attendant risks of increased susceptibility to disease or unintended amplification of debilitating genes.

There could also be wide-reaching cultural, sociological and political effects from a drastically less diverse population, including increased pressure to conform to cultural, and eventually genetic, norms and decreased acceptance of differences among people. The use of these technologies could also dangerously exacerbate existing inequalities. People able to afford these expensive procedures will be able to select for more genetically advantaged children, potentially allowing the rich to get genetically richer, while the poor do not.

As difficult as breaking the cycle of poverty is today as the result of environmental factors, imagine having a society with exaggerated differences in physical and intellectual abilities as well as disease susceptibilities. And citizens with increased resistance to disease, or fewer genetic risk factors, may be loath to pay into shared-risk programs with a clientele of less "genetically fit" people. The potential for discrimination, the breakdown of social safety nets, and entrenched inequality would be immense.

The ability to select children's traits through PGD, however, is only the tip of the iceberg. Far more worrisome is the future potential to alter the genetic makeup of children themselves through techniques such as germline modification--the genetic modification of human germ cells (sperm, eggs, or embryos) resulting in inheritable changes. Germline modification is supported by some groups as a matter of reproductive choice--even though germline modification, unlike other forms of genetic enhancement,

would not only change the genetic structure of a child according to its parents' specifications but would cause those altered genes to be passed on to the child's offspring.

Along with many of the risks associated with PGD, germline modification technology could potentially produce new beings that are not even entirely human, but rather a combination of human and non-human genetic material. Genetically altered humans would almost certainly commingle with the rest of society, thereby affecting the offspring of other individuals and leading to new and unexpected genetic combinations. Choosing when to start a family is undoubtedly a personal matter, but choosing the future genetic makeup of the human race affects us all.

Human cloning technology presents similar problems for society, though they are likely to be less prevalent. Creating a child who is almost an exact genetic duplicate of someone else could affect disease burdens and, to a lesser extent, genetic diversity, as well as fundamentally alter the nature of human reproduction from sexual to asexual. While no scientists are advocating this practice, liberal intellectual Lawrence Tribe cautions against banning reproductive cloning because of "concern [about] the very decision to use the law to condemn and then outlaw patterns of human reproduction." He worries that it might "lend credence to strikingly similar objections to surrogate motherhood or gay marriage and gay adoption."

Although no regulation of human reproduction should be undertaken lightly, there are compelling reasons to ban reproductive cloning, should the technology become available, including problems related to the safety and efficacy of the process, as well as ethical concerns. The irrevocable change that reproductive cloning could bring to the family structure, particularly the relationship between parent and child, makes it hard to argue that such drastic changes should be left solely to individual decision and not be examined by society collectively.

### **Making Choices**

So what is the appropriate response to these current and future issues? The most reasonable solution is regulation. Progressives are understandably wary of regulating anything related to reproductive decision-making. But an unregulated fertility industry is even more unappealing. Certain unregulated individual reproductive choices in a market system could easily lead to undesirable societal outcomes, particularly because individuals would be unlikely to sacrifice perceived benefits to their children for the seemingly abstract concept of the common good.

The current state of self-regulation of US fertility clinics, which has been likened to the Wild West, demonstrates that voluntary professional guidelines will not be enough. And clearly Congress does not have the scientific expertise to address each of these issues individually in a timely or effective manner. The courts would prove an equally awkward and ill-suited means of dealing with these problems, particularly in the absence of relevant laws.

One promising idea, outlined by Francis Fukuyama and Franco Furger in *Beyond Bioethics: A Proposal for Modernizing the Regulation of Human Biotechnologies*, is for the government to create a new regulatory body specifically for reproductive technologies. Although the authors remain focused on the well-being of the particular individuals involved and not the larger effects on society, the proposal is not wedded to specific regulatory outcomes.

Other countries have already established regulatory authorities for some reproductive technologies, with no adverse consequences for access to abortion and contraception. Britain created the [Human Fertilisation and Embryology Authority](#) in 1990 to regulate fertility clinics, embryo research, and the storage of embryos and gametes. Canada is in the process of creating the Assisted Human Reproduction Agency of Canada, which was established in 2004 to oversee assisted human reproduction. Britain regulates the use of PGD, restricting its use to certain diseases, and Canada will regulate the process as well. Both Britain and Canada currently prohibit reproductive cloning and germline modification, which are legal in the United States.

Of course, there are many questions that must be answered about such a regulatory agency in the United States, including its composition, scope and powers. But despite legitimate concerns that such an agency should not unduly constrain reproductive rights, some regulation of certain current and potential reproductive technologies is needed. A regulatory body serves little purpose, however, without a theoretical framework to inform it.

Progressives, then, will need a new way to distinguish what reproductive technologies and practices should be regulated. While there is no clear answer, there are a number of possibilities. Progressives could distinguish biotechnologies based on their likely effect on society--ones that will have little or no foreseeable negative effect would remain unregulated. We could also consider regulating biotechnologies based on the best interests of the potential child, assuming we could determine them.

Alternatively, a distinction could be made between reproductive decisions to have a child and those regarding the genetic makeup of that child. We also might regulate technological uses that are inherently discriminatory or likely to affect disproportionately and adversely some discrete and insular minorities. Or a line could be drawn between regulating the use of certain technologies and regulating individual choices themselves.

All of these suggestions have strengths and weaknesses, including the difficulty in determining how biotechnologies should be classified and the potential for regulation to be too broad or too narrow. What is important, however, is that progressives start debating the merits of these and other potential conceptual frameworks.

Whether we like it or not, some reproductive decisions are becoming matters of societal interest, and we need to be clear on where we think society should draw the line. In order to maintain existing protections for reproductive choices we view as self-regarding and personal, we need to delineate clearly which of them require oversight and which do not.

