

URPP Human Reproduction Reloaded

Summary Sub-project 1: Normativity of Human Reproduction

Human reproduction is shaped and claimed by various discourses on the body, self-determination, the definition of the family, and the admissibility of human intervention. It is governed by numerous norms while itself generating normative ideas and leading to social, ethical and legal consequences. Reproductive medicine is developing rapidly, so research into the normative paradigm shifts associated with new reproductive possibilities is important both to Swiss and international science and to national and global society. Research has to consider the experiences of other countries and adopt a comparative approach; it must also be heuristically open, evolve around the findings from empirical research and include citizen science to achieve valid results. The **main scientific questions** of sub-project 1 cover both the traditional and the new normativity of human reproduction: How can a normative framework adequately take into account the interests of the individual and of society as a whole? How can the legitimate objectives of medical advances be reconciled with the fundamental values of ethics and law? This sub-project unites competencies in law, philosophy, ethics, history, and gender studies to unfold, analyze, and question various explicit and implicit normative assumptions.

Sub-project 1 entails **three research areas**, which are interlinked by a common methodological-reflective framework. In the first four years of the URPP H2R, this framework draws on the perspectives of legal history, legal philosophy, ethics, and gender theory. The historical analysis of concepts and perceptions provides insights into both the time-dependence and the continuity of the 'naturalness argument' and can reveal presuppositions and extrapolations of long-outdated ideas; whereas research on ethical and legal-philosophical requirements may help to define standards, boundaries and expectations for legislation in this highly personal area. This heuristic framework has to incorporate feminist understandings of reproductive medicine. These vary from views of modern reproductive technologies as liberating women from the 'tyranny of reproduction' to concerns that the new reproductive possibilities give rise to a 'dictate of fertility' flanked by an ominous alliance of economy, technology, and an oppressive ideology of motherhood that curtail or constrain the autonomy of women.

Rights over bodies and bodily substances: ART has decoupled reproduction from sexuality, but reproduction remains body related. The asexual production of children can be perceived as liberation from traditional power structures. However, new forms of control can also emerge through reproductive techniques. In particular, questions arise as to how access to germ cells and embryos affects the perception of the body. There is a need to examine how concepts of reproductive autonomy, physical integrity, and property contribute to understanding and regulating egg donation, social egg freezing and surrogacy and to reflect on notions of the body. We will construct a conceptual framework that enables us to evaluate the appropriateness of the existing legal regulations and possible reforms in light of the ethical and philosophical issues of autonomy, self-perception, and the relationship of reproduction to the human body. Medically assisted reproduction not only raises questions of self-determination and human dignity; it also challenges the significance of property and property rights for the identity and self-realization of the human being. ART has expanded choices around what we do with our body. Does a person have the right (or a social obligation?) to dispose of their body and body substances? The traditional division of body and property may no longer be capable of conceptualizing modern reproductive options. Do we apply property law, personality law or family law to cryopreserved gametes and embryos? What are the ethical-philosophical and legal implications of either categorization? A new paradigm for conceptualizing the role of the body and bodily substances may be necessary, which requires exchange and comparison with other jurisdictions, integrating a reflection on the notions of exploitation and instrumentalization of the individual. Why do most European countries consider bodily substances inalienable, whereas other parts of the world liberally allow their commodification? How can growing conflicts of law be reconciled between international markets of reproductive medicine such as the US and India and cross-border reproductive care and Swiss public order that forbids such procedures as egg donation and surrogacy?

Descent and family: Descent, or lineage, serves as a starting point for the social and legal recognition of various forms of human community. Juridical concepts of descent have long been subject to historical change. The possibilities offered by sperm donation, split motherhood, and same-sex parenthood muddle our notions of what is due to nature and what are normative attributions in definitions of parenthood, family, citizenship, and ancestry. How can these key concepts be ethically and legally recorded and shaped? The meaning and purpose of notions of family and parentage can and must be understood by reflecting the insights of both legal history and ethical-philosophical debates. Interventions of humans in their filiation through adoption and abandonment allow the normative implications and implicit presuppositions of natural boundaries to be grasped. Equally, diverse ethical-philosophical insights into the human need to belong to a group and family, for instance in the debate about ‘the right to know one’s origins’ prove that rules of parentage are by no means universal. The legal relationship between a child and their parents, filiation, is attributed by shifting and conflicting criteria: birth, genetic origin, social relatedness, contractual obligation, and the intention to be a parent. There is a need to assess legislation and to ask whether existing legal standards are still appropriate for the diverse social reality and families extended through ART. In third-party assisted reproduction, filiation is no longer merely a matter of replacing one parent couple with another (intending parents instead of genetic or gestational parents), for constellations of multiple parenthood allow more than two individuals realize their desire to have children or participate in this from the outset. Examples are two same-sex couples; the male couple and the surrogate mother; the female couple and the sperm donor. In contrast to social multiple parenthood, seen in patchwork families, original multiple parenthood not only raises problems of normative and social appreciation but also calls into question notions of lineage, mother, father, and kinship. In addition to examining existing regulations, which prohibit many medical interventions in Switzerland and other countries, in-depth analysis is needed of the concepts, their roots, conditions and limitations, and for reconfiguration.

The scope and limits of reproductive autonomy: The debate on reproductive medicine is strongly influenced by human-rights and constitutional discourse. Reproductive autonomy is acknowledged as a fundamental right, but human dignity, the prohibition of discrimination, and social justice are viewed as threatened by modern reproductive medicine. This is the case particularly where genetics opens ways of selecting embryos or purposefully shaping future offspring by intervening in the germline. Controversies surround possible indications for embryo selection and gene editing; a distinction is regularly drawn between responding to diseases and striving for enhancement. Ethical, socialscientific, and legal requirements based on historical experience are needed that take proportional account of legitimate concerns and the dangers of selective reproduction. A first step must include an analysis of the historical and philosophical conceptualizations of autonomy, including its relational dimensions, and their extension to reproduction. Second, a legal inquiry must incorporate international, constitutional, private, and criminal law perspectives on reproduction. What role does and should the state play in regulating human reproduction? Are there specific obligations of the state to enable the realization of reproductive interests? Indeed, law and ethics cannot only be seen as limiting reproductive freedom but also as securing it. Examples such as very late parenthood or selecting an embryo with genetic material that is suitable for ‘saving’ a sick child (so-called savior sibling) show the trade-offs that need to be considered. Philosophically and legally, the most salient question is whether and how the possible interests (autonomy, freedom, health, best interests, right to an open future) of a child not yet conceived are to be taken into account. New medical techniques for controlling human reproduction can spark conflict between the interests of society as a whole and individual freedom. For example, general interests seem to justify restrictions on access to selective medical procedures, since these could lead to discrimination against the disabled or even constitute discrimination. Conversely, their use could be viewed as a moral obligation to eradicate genetic diseases and to free humanity from suffering. Finally, research is needed into the normative evaluation of the connection between reproduction and profound societal threats such as climate change. Here, concepts and theories on offer need critical examination in light new and future possibilities of controlling and optimizing reproduction – and taking into account a religiously and ethically pluralistic society.

High-risk sub-project “CRISPR technology in human reproduction”, additional research questions: CRISPR is a cutting-edge technology which calls for an ethical, social and legal investigation. The possibility of germline modification has received much attention from the media and ethics committees. Whereas interventions in the germline until recently were considered to cross a ‘red line’, the discussion now focuses on their ethical defensibility under certain circumstances and on where to draw that line. What are the specifics of a germline intervention? Does mitochondrial replacement therapy also constitute such an intervention? Recent developments call for an in-depth review of the many fundamental issues raised by using CRISPR technology in human reproduction (autonomy and responsibilities, human dignity, nature, parenthood, equality, justice, and the welfare of the child), and the field of application chosen here, complex genetic diseases, seems best suited as a focus of attention. Ethical debates also need to address the question of risk evaluation by reference to notions of risk in different normative frameworks: When is the risk of off target effects too high, what circumstances would make it acceptable, and how can this risk be evaluated? We also need to identify and understand the views of the public and society on genome editing and integrate citizens’ perspectives.

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