

Can conscientious objection lead to eugenic practices against LGBT individuals?

Toni C. Saad¹  | Daniel Rodger² 

¹Cardiff and Vale University Health Board, Cardiff, Wales, UK

²Allied Health Sciences, School of Health and Social Care, London South Bank University, London, UK

Correspondence

Toni C. Saad, University Hospital of Wales, Main Building, Heath Park, Cardiff CF14 4XN.

Email: tonisaad@doctors.org.uk

Abstract

In a recent article in this journal, Abram Brummett argues that new and future assisted reproductive technologies will provide challenging ethical questions relating to lesbian, gay, bisexual and transgender (LGBT) persons. Brummett notes that it is likely that some clinicians may wish to conscientiously object to offering assisted reproductive technologies to LGBT couples on moral or religious grounds, and argues that such appeals to conscience should be constrained. We argue that Brummett's case is unsuccessful because he: does not adequately interact with his opponents' views; equivocates on the meaning of 'natural'; fails to show that the practice he opposes is eugenic in any non-trivial sense; and fails to justify and explicate the relevance of the naturalism he proposes. We do not argue that conscience protections should exist for those objecting to providing LGBT people with artificial reproductive technologies, but only show that Brummett's arguments are insufficient to prove that they should not.

KEYWORDS

assisted reproductive technologies, conscientious objection, eugenic, LGBT, metaphysics, naturalism, values

1 | INTRODUCTION

Abram Brummett argues that conscience claims relating to lesbian, gay, bisexual and transgender (LGBT) people requesting assisted reproductive technologies (ART) should undergo philosophical scrutiny.¹ He exhorts bioethicists to be better philosophers, to engage with the metaphysics that underpin the controversy surrounding conscience claims. While Brummett's aspiration to practise better philosophy is laudable, his paper does not achieve his intention of showing that conscientious objection (CO) with regard to LGBT people accessing ART is inconsistent, eugenic or harmful. To demonstrate this we: first, address Brummett's contention that those with religious objections should, on their own terms, support the access of ART to LGBT people; second, analyse the claim that CO with regard to LGBT people accessing ART is eugenic; and third, consider Brummett's view that philosophical

naturalism is amenable to resolving the debate on CO. We do not here argue that conscience protections should exist for those objecting to providing LGBT people with ART, but only wish to show that Brummett's arguments are insufficient to prove that they should not.

2 | CRITIQUE OF RELIGIOUS OBJECTIONS

Brummett offers 'internal reasons as to why Christian clinicians with an initial sense to object may want to consider not refusing ART to LGBT individuals'.² He quips that '...one must appreciate some degree of irony in the idea that a movement which considers itself pro-life would deny LGBT couples access to life-creating technologies', adding that, if for Christians the fundamental problem with LGBT relationships is an inability to procreate, then the procreative possibilities of ART should solve it.³ Disappointingly, Brummett does not interact with any spokesperson of this movement he identifies, but

¹Brummett, A. (2018). Conscience claims, metaphysics, and avoiding an LGBT eugenic. *Bioethics*, 32(5), 272–280. The phrase abbreviated as ART is unfortunately vague. Since Brummett himself categorizes in vitro fertilization (IVF) as ART and it is the most relevant technology to current practices, we use ART largely to mean IVF in this paper. We do, however, add that more precise terminology might allow for better and possibly morally relevant distinctions between practices labelled ART.

²Ibid: 275.

³Ibid.

erects a strawman. It is not true that those with pro-life views are committed to supporting procreation under any circumstances, including by use of 'life-creating technologies'. Neither does being pro-life necessarily entail supporting ART: some in the pro-life movement have grave concerns about, for example, the possibility of creating 'leftover' embryos during in vitro fertilization (IVF).⁴ This concern is unrelated to the characteristics of the people making use of ART. Others oppose ART because of its perceived undermining of human equality: giving to some the power to create others introduces an inequality in kind between creators and creatures (rather than parents and progeny).⁵ Moreover, the inability to procreate per se is not what is claimed to be morally relevant; it is rather the choice to use procreative organs for uses contrary to procreation, thereby undermining their natural function.⁶ For the purposes of this paper the merit of these points is beside the point; we only mention them to show that Brummett is speaking for his would-be opponents rather than with them.

Brummett then considers the possibility that procreation specifically by natural means is what matters to religious objectors. He presents a dichotomy: 'procreation in and of itself, by any means, either is or is not what legitimizes sexual relationships and family structures on the traditional view.'⁷ If procreation per se is sufficient to legitimize any sexual relationship, then it is equally so for LGBT relationships. If it is not, and rather must be qualified as *natural* procreation, then 'no use of ART is acceptable for anyone'.⁸ This conclusion is not outlandish – some clinicians oppose the use of ART in all circumstances.⁹ But to these Brummett says: 'if ART is unacceptable for anyone, then one is left wondering why any uses of modern medicine, virtually all of it "unnatural," would be acceptable.'¹⁰ Since the point of medicine is to oppose the natural course of disease, Brummett thinks the word 'natural' is being used as a 'cloak to hide normative judgment against LGBT reproduction'.¹¹

Unfortunately, this *reductio* conflates two meanings of 'natural' (and 'unnatural'). Brummett assumes that when one describes procreation as natural, one necessarily uses the word in the identical sense to when one speaks of natural disease progression. Brief reflection undermines the plausibility of such equivocation. In the first sense,

natural refers to the use of the human body's powers for one of its natural end-goals: procreation.¹² Natural here means *proper to one's human nature*.¹³ In the second sense, however, natural describes the processes of disease which harm natural functions. So, when clinicians attempt to counter disease they interfere with a process which is natural in that it occurs naturally, but which is unnatural to human functions and health. Disease and death are naturally occurring, but combatting them does not usually entail the harming of natural human powers – and if it does, it should only be as a side effect or according to the principle of totality.¹⁴ Indeed, it can be argued that the purpose of medicine is to restore human nature; and such an end is quite compatible with the use of non-natural (artificial) means.¹⁵

Brummett's misunderstanding on this point conceals the relevant difference between ART and traditional medicine. ART is unnatural in a different sense to medicine – by which we mean medicine as traditionally conceived, aiming at the restoration of human nature.¹⁶ This becomes clear when we compare ART to basic medical care. It cannot reasonably be argued that the two are ever needed in the same sense; the indications for the two are categorically different: one does not need ART in the same sense as one needs an emergency laparotomy. This is because ART is not restorative of human nature: it does not prolong life or restore anything lost to disease or injury such as homeostasis or organ function.¹⁷ Treating a disease state such as septic shock entails restoring the body's natural functions, where those natural functions are determined by human nature. The *means* might be artificial (antibiotics, vasopressors etc.), but the *end* and the *intention* are the restoration of nature.

Some interventions are not *therapy*. They are typically described as *enhancement* when they are thought to confer an advantage to their recipient (though some might wish to distance themselves from this optimistic phrase). The distinction is not to do with the material cause of any particular intervention but rather with the intention to which it is put. For example, consuming a naturally occurring plant could be natural or unnatural. If it is used to restore health by, say, treating heart failure, it can be called natural. The same or another natural substance, however, could be used for an unnatural purpose, such as causing hallucinations, euphoria or death. What matters is not what the intervention is made of, but the *intention* which it

⁴Wyatt, J. (2009). *Matters of life and death*. Nottingham, UK: Intervarsity Press.

⁵O'Donovan, O. (1984). *Begotten or made?* Oxford, UK: Clarendon; Moschella, M. (2016). The wrongness of third-party assisted reproduction: A natural law account. *Christian Bioethics*, 22(2), 104–121; Finnis, J. (2011). *Human rights and common good: Collected essays Volume III*. Oxford, UK: Oxford University Press.

⁶Feser, E. (2015). *Neo-scholastic essays*. South Bend, IN: St Augustine's Press.

⁷Brummett, *op. cit.* note 1, p. 275.

⁸*Ibid.*

⁹For example, the Roman Catholic encyclical *Donum Vitae* (1987) opposes all use of IVF. See http://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_19870222_respect-for-human-life_en.html [Accessed Aug 21, 2018]. That said, some possibilities raised by new technologies would be less problematic to someone opposed to IVF, for example by restoring the power of gametogenesis: see Pruski, M. (2017). The relationship of gametes to those who procreate and its impact on artificially generated gamete technologies. *Ethics & Medicine: An International Journal of Bioethics*, 33(1), 27–41. See footnote 1.

¹⁰Brummett, *op. cit.* note 1, p. 275.

¹¹*Ibid.*

¹²Feser, *op. cit.* note 6; Oderberg, D. (2007). *Real essentialism*. New York, NY: Routledge.

¹³Human beings cannot fly. It is not in human nature to fly, and any attempt to change human nature to fly (e.g., by genetic modification) would be unnatural in the relevant sense here. Of course, flying in an aeroplane leaves human nature unchanged, and so can be unnatural only in a different sense. Likewise, if a deaf child has his power of hearing restored by artificial means such as a cochlear implant, this is natural in the sense that hearing is proper to human nature: the implant restores a function that by nature belongs to humans.

¹⁴For example, intravenous antibiotics, which might be required to treat sepsis and thereby restore the body's power of homeostasis and haemostasis, can sometimes lead to sensorineural deafness as a side effect. Here, it can rightly be said that the side effect is unnatural because it has harmed a natural human power: hearing.

¹⁵Eijk, W. J. C. (2017). Is medicine losing its way? A firm foundation for medicine as real *therapia*. *The Linacre Quarterly*, 84(3), 208–219.

¹⁶*Ibid.*

¹⁷Though ART is sometimes framed as treatment for infertility, we later argue that this is an inaccurate description because ART *bypasses* natural functions rather than restoring them to individuals.

serves. It is this intention which distinguishes what is therapeutic from what is not. By asking what the intention of a particular intervention is – why it is being done – one gets a fair idea of whether it is therapeutic or not. If an intervention aims to restore a natural function which has been harmed or lost by disease, it can be called therapeutic. If, however, a procedure is intended to give a new function, for example, if the power to gestate a child were given to a male by uterine transplantation, this cannot reasonably be thought of as therapy.¹⁸ Something similar could be said about anabolic steroids: treating a primary deficiency of sex hormone is quite different to seeking massive muscle hypertrophy for aesthetic reasons.

This distinction shows that ART is not therapeutic. Rather than restoring the natural powers of fertility to infertile individuals by addressing underlying pathology, it bypasses these natural powers. ART differs from treating the underlying cause of an individual's infertility, such as an endocrine disorder or anatomical abnormality. It is a different thing to treat a congenital deformity of the uterus in order to *restore* fertility than to use technology to *replace* its function or *circumvent* the necessity of gestation. Therefore, it is false to suggest, as does Brummett, that one cannot consistently object to 'unnatural' IVF because the rest of medicine is also 'unnatural'.

3 | CONSCIENTIOUS OBJECTION AS EUGENICS?

Brummett cites Judith Daar in support of the idea that denying certain individuals access to ART constitutes a new form of eugenics.¹⁹ *Eugenics* is a word with historical connotations anyone would wish to avoid, so the implicit accusation that those who would deny a population subgroup access to ART are crypto-eugenicists is potent. Being opposed to classical eugenics (as we are) does not, however, entail that one must embrace a disputed redefinition of the word.

The word eugenics means different things, some of which are benign. For example, advising mothers to take folic acid supplements during pregnancy to minimize their child's risk of developing spina bifida can be considered eugenic in the sense of promoting a 'good birth'. Clearly, however, the case which matters to Brummett is *unjust* eugenics, which is typically implied in the common usage of the word. If a policy aims to eradicate a certain group of people it is called genocide. If it aims to prevent the conception or birth of members of a certain people group because they belong to that group it is (unjustly) eugenic.²⁰ Hence, a mass sterilization programme of, say, people of Arab origin because they are of Arab origin, would be eugenic. That such a policy is also unjust is obvious.

The same cannot be said for Brummett's claim that preventing LGBT couples from accessing ART is eugenic. In the case of the

anti-Arab eugenic policy, the point is to prevent the coming into being of people who are ethnic Arabs. The same is not true of the exclusion of LGBT people from access to ART: the point of such a policy is not to prevent the coming into being of LGBT people. Under the anti-Arab eugenic policy, all people of Arab origin would be forbidden to procreate. This is not so under the policy which Brummett describes as eugenic. Any *individual* who identifies as LGBT is permitted to procreate. The policy does not apply to individuals qua LGBT individuals, but only to *couples* who cannot reproduce by natural means despite being individually fertile.²¹ The policy cannot reasonably be accused of denying the liberty to reproduce to any individual, but only to couples who are, *by incapacity of nature and not by defect or disease*, unable to procreate with one another. Someone may still object that the policy is eugenic because it prevents the coming into being of a certain kind of person: children with (biological) parents of the same sex. The problem with this objection is that it entails the counterintuitive conclusion that eugenics can apply to things other than heritable traits.²² For instance, if the state decreed that all babies born on Tuesdays should be killed, it would be unjust but not eugenic, because being born on Tuesday is not a heritable trait or a kind of person. To insist that eugenics applies to non-heritable traits seems to dilute the meaning of the word beyond usefulness. Therefore, since the policy Brummett opposes does not prevent any individual in particular from procreating and does not prevent LGBT people from coming into existence, it cannot be eugenic in any meaningful sense. Even if Brummett would argue that that conscientious objection in this context is unjust, the claim that it is eugenic is incorrect.

Moreover, not all barriers to procreation are necessarily unjust: it is quite reasonable that those under a certain age should be restricted by law from engaging in sexual intercourse (and therefore reproducing). One might say that this policy is eugenic because it forbids the coming into being of a certain type of person: those with underage parents. If this example shows that using 'eugenic' to describe such a policy is frivolous, it also shows that restricting reproduction can be just. So, for Brummett's argument to succeed he must not only show that the policy he opposes is eugenic in a non-trivial sense, but also that it is unjust. The first he has failed to do, and has relied on the negative associations and rhetorical weight of 'eugenics' to attempt to show the second.

²¹It has been suggested (in another context) that single women or same sex couples should not receive ART because they are only *circumstantially* infertile. They are infertile not by defect of anatomy or physiology but by choice of sexual partner. See Richie, C. (2015). What would an environmentally sustainable reproductive technology industry look like? *Journal of Medical Ethics*, 41, 383–387. Richie also argues that a reason for rationing ART is its environmental impact. It would be interesting to consider Brummett's claim that such rationing is eugenic in view of this line of reasoning.

²²To wade into a controversial subject briefly, one could object that race is not a heritable trait but a social construct. While this may be true, there are certain physical features which correlate with race which are genetically determined. Being raised by parents of the same sex, however, does not have a genetic basis. And, while a child may have DNA from both its 'mothers' or 'fathers' through the use of artificial gametes or other techniques, this is only a fact and is not heritable or transmissible. If ART were completely illegal, objectors would be left to argue that such a policy is eugenic in that it prevents the coming into being of children produced by ART. But being produced by ART has nothing to do with genotype or phenotype: it is just a fact about how one came to be.

¹⁸The function of gestating a child is natural to women, and so restoring that natural function by means of uterine transplantation can reasonably be thought of as therapeutic.

¹⁹See: Daar, J. (2017). *The new eugenics: Selective breeding in an era of reproductive technologies*. New Haven, CT: Yale University Press.

²⁰Genocide and eugenics are not mutually exclusive.

Brummett may well respond by saying that his account of harm, which follows his discussion of eugenics, explicates the claim that the policy is unjust. We consider this now.

4 | PHILOSOPHICAL PROBLEMS

Brummett argues that philosophical naturalism can supplement Mark Wicclair's and other's compromise position on CO.²³ He criticizes these accounts for failing to reckon with the metaphysical presuppositions underpinning the argument that CO should not be honoured if it causes harm, discriminates invidiously against persons, or is based on a belief which is demonstrably false. Brummett is optimistic that 'naturalism can provide a metaphysical basis for establishing constraints to conscientious objection within the compromise approach' and thereby do what Wicclair et al. failed to.²⁴ He thinks that adopting naturalism makes the 'demonstrably false' caveat far more powerful to limit CO because it not only rules out objections based on scientific misunderstanding, but also religious claims (on the basis that naturalism considers religious claims to be merely (factual) claims without scientific evidence). For Brummett, naturalism 'expands the realm of false factual claims we can use to constrain conscientious objection'.²⁵ And, since naturalism evaluates all claims according to the same scientific standard, any view which fails to meet the standard can be rejected. This includes all religious claims: 'naturalism argues that a determination about the likely truth of factual claims allows us to criticise not only beliefs that run counter to hard evidence but also all beliefs, including metaphysical claims'.²⁶ Brummett therefore believes that because naturalism excludes all religious objections, any objection a clinician may have to providing ART to LGBT persons can be dismissed on grounds that it is 'supernatural'. On Brummett's account, such an objection depends on a false factual belief (according to naturalism) and hence can carry no weight.

Brummett adds that it is harm conceived *naturalistically* which should constrain conduct. He defines these harms as 'harms that occur within the world we find ourselves in as opposed to supernatural harms that are claimed to result in such things as "sin", or the violation of "God's will" or a threatened ability to achieve salvation...'.²⁷ He thinks that construing harm in this way is relevant to determining the constraints on CO. Hence:

Naturalism gives us the basis from which to say what many have thought all along; that denying religiously based claims of conscience that would bring harm to others is all right because such claims are grounded in metaphysical beliefs that are highly unlikely to be true.²⁸

If these last two paragraphs are a fair summary of it, Brummett's argument is deficient. First, he does not explicitly argue that denying ART to LGBT people constitutes naturalistic harm. This crucial premise is not established by argument. In fact, apart from ruling out 'supernatural' harms, there is no elaboration on what harm is, nor are concrete examples of it given. Hence, based on the brief definition of naturalism, it is far from clear that the consequences of denying LGBT people ART constitutes harm naturalistically conceived.

Second, there is no attempt to justify the naturalism proposed. Brummett acknowledges that naturalism is not all that is needed in the conversation on CO but does not indicate what else might be required. Regardless, the problematic nature of merely suggesting that naturalism is expedient for constraining conscience is not a valid argument in its favour.

Third, Brummett explains that naturalism denies any distinction between facts and values, and argues that moral disagreements are really factual disagreements in disguise.²⁹ This approach to moral disagreement is neither necessarily true nor uncontested by other naturalists. Erik Wielenberg, a philosophical naturalist himself, argues for a non-natural, non-theistic moral realism, in which moral facts are not reducible to natural facts and properties.³⁰ He argues that moral properties are sui generis features of the universe which are not reducible to natural quanta that can be empirically investigated.³¹ Brummett's bold claim that naturalism denies a distinction between facts and values, therefore, seems to require further justification and explanation, especially because generating values which are not obviously related to facts (e.g., to do with dignity and stigma) seems central to his project. Exactly which facts these values depend on is unclear. It seems to us that Brummett's account of philosophical naturalism and its relationship to CO raises more problems than it solves.

Fourth, Brummett's plea to bioethicists to engage in philosophy in a deeper way sits uncomfortably with the paper's philosophical inexactness. Perhaps the most egregious example of this is the repeated assertion that the belief that 'God has decreed the LGBT lifestyle to be sinful'³² is a metaphysical claim. It quite clearly is a *theological* and *ethical* claim.³³ Likewise, when Brummett points out that 'harm is not an ametafysical notion—what some consider harmful, others consider good',³⁴ he really is hinting at an *axiological* concept. And, when he says 'to presume that such concepts as harm and discrimination are somehow ametafysical ... is to miss the deeper elaboration...'³⁵ not only is it unclear that anyone is actually

²⁹Ibid: 279.

³⁰Wielenberg posits a naturalism that denies the existence of non-physical entities possessing causal power, such as God, but which denies the stronger claim that reality is reducible to the natural world.

³¹Wielenberg, E. (2014). *Robust ethics: The metaphysics and epistemology of godless normative realism*. Oxford, UK: Oxford University Press.

³²Brummett, *op. cit.* note 1, p. 272.

³³Claims can be both metaphysical and theological. An example of such a claim would be appeals to human equality which are rooted in Judeo-Christian claims about human nature rather than something discovered through empirical inquiry. See Ferry, L. (2011). *A brief history of thought: A philosophical guide to living*. New York, NY: Harper Perennial.

³⁴Brummett, *op. cit.* note 1, p. 279.

³⁵Ibid.

²³Brummett, *op. cit.* note 1, pp. 278–280.

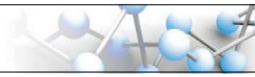
²⁴Ibid: 279.

²⁵Ibid.

²⁶Ibid.

²⁷Ibid.

²⁸Ibid: 280.



claiming or assuming that harm and discrimination are 'ametaphysical' concepts, but it seems that they are primarily *ethical* in nature rather than metaphysical, especially in the case of discrimination. Although we readily admit that metaphysics and ethics cannot be separated ontologically (though they can be distinguished for the purposes of analysis), we find that Brummett's terminological inaccuracy undermines his exhortation to practise better philosophy.

5 | CONCLUSION

Whether clinicians may conscientiously opt out of providing ART to LGBT persons is an important case study for the debate surrounding CO in healthcare. In drawing attention to it, however, Brummett has constructed an argument which relies on ultimately indefensible ideas of nature, eugenics and the relationship between naturalism and ethics. His analysis conflates two distinct uses of 'natural', distorts the meaning of eugenics beyond meaningful use, and interprets naturalism in a simplistic fashion. If there is any injustice in this special case of conscientious it is not that it is a species of eugenics.

ACKNOWLEDGMENTS

The authors would like to thank Bruce Blackshaw, Michal Pruski and Michael Wee for commenting on earlier drafts of this paper. Special thanks are also owed to the reviewers whose detailed comments and interaction have been greatly appreciated.

CONFLICT OF INTEREST

The authors declare no conflict of interest.

ORCID

Toni C. Saad  <https://orcid.org/0000-0002-9831-1784>

Daniel Rodger  <https://orcid.org/0000-0002-2121-7167>

TONI C SAAD is a foundation doctor at University Hospital of Wales, Cardiff, UK.

DANIEL RODGER is a senior lecturer in perioperative practice at London South Bank University. His research interests include perioperative death, moral distress, and the debates surrounding the ontological status of human beings.

How to cite this article: Saad TC, Rodger D. Can conscientious objection lead to eugenic practices against LGBT individuals?. *Bioethics*. 2019;00:1–5. <https://doi.org/10.1111/bioe.12557>