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Does Reproductive Justice Demand Insurance Coverage for IVF?

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Reflections on the Work of Anne Donchin

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Abstract: This paper comes out of a panel honoring the work of Anne Donchin (1940-2014), which took place at the 2016 Congress of the International Network on Feminist Approaches to Bioethics (FAB) in Edinburgh. My general aim is to highlight the contributions Anne made to feminist bioethics, and to feminist reproductive ethics in particular. My more specific aim, however, is to have a kind of conversation with Anne, through her work, about whether reproductive justice could demand insurance coverage for in vitro fertilization. I quote liberally from Anne's work for this purpose, but also to shower the reader with her words, reminding those of us who knew her well what a wonderful colleague she was.

Keywords: reproductive justice, Anne Donchin, in vitro fertilization, insurance coverage, reproductive rights, adoption

1. Introduction

It was my absolute pleasure to be on a panel honoring Anne Donchin at the 2016 Congress of the International Network on Feminist Approaches to Bioethics (FAB). Anne was someone I always looked forward to seeing at the Congress because of her constant smile and wit. We also had very common research interests—in feminism, reproduction, families, autonomy, philosophy, and so on. This meant that we could usually dive in, without any preamble, to discussing what we were working on. Outside of FAB, Anne was very generous in reviewing and commenting on

my work. She was a cherished colleague for me, and I know for many others as well. We will miss her.

Anne was devoted to FAB and its mission, particularly its goal of developing inclusive theories in bioethics (Donchin 2004). She continually challenged herself and other feminist bioethicists to develop approaches to bioethics that are "responsive to the disparity of social conditions that structure the lives of women and other marginalized social groups across multiple cultural traditions" (Rawlinson and Donchin 2005, 261).

This objective explains the interest Anne had in *reproductive justice*. While a framework of reproductive rights prevailed in bioethics, Anne supported the judgment of women of color and Indigenous women in favor of reproductive justice. A political and ethical approach as well as a movement, reproductive justice serves as a counterpoint to reproductive rights. While it insists that women and other individuals have these rights, it also, importantly, demands that they live in social conditions that allow them to *exercise* these entitlements. As some have put it, reproductive justice, therefore, "fuses" or "aligns" reproductive rights with social justice (Fédération du Québec Pour Le Planning Des Naissances [FQPN] 2014; Bailey 2011, 726). Anne took up the call for reproductive justice in her work, and considered what it suggests in relation to appropriate regulations for assisted reproduction generally (Donchin 2011), and reproductive tourism or travel specifically (Donchin 2010).

In this paper, I aim to have a kind of conversation with Anne, through her work, about a topic that has interested me lately: insurance coverage (public or private) for in vitro fertilization. I'd like to ponder how we might view insurance funding for IVF from the lens of reproductive justice, as Anne and others have understood this lens. Although she never explicitly applied a framework of reproductive justice to the topic of who pays for IVF, Anne flirted with the idea

that funding for it might be justified from a perspective very much like that of reproductive justice (Donchin n.d., ch. 7: 13).

For my part, I have opposed such funding so long as it requires that IVF be deemed medically necessary. I do so in "The Medical Nonnecessity of In Vitro Fertilization" (2017), which was published in volume 10, number 1 of *IJFAB*. The theoretical frameworks I use there do not include that of reproductive justice, however, and I'm interested to explore—and would love to have had a real conversation with Anne about—whether my conclusions should have been different because of what reproductive justice requires. To this end, let me do three things: (1) summarize the argument in my paper briefly; (2) say more about the nature of reproductive justice; and (3) discuss whether reproductive justice could demand insurance funding for IVF.

2. The medical nonnecessity of IVF

My paper on IVF funding responds to a set of common though not universal social conditions, as well as to common facts about IVF. It is also informed by a particular theory about medical necessity, and a theory about the value of parenthood and procreation. Let me explain.

The social conditions I respond to are ones in which the paired norms of pronatalism and biologism are strong yet do not compel most women to want to procreate. These norms favor women bearing children (pro-*natalism*), and people having biological—or, more specifically, genetic—children (*biolog*-ism), respectively.[1] Because of their influence in the societies I focus on, coupled with any instinct to reproduce biologically, many infertile women do, in fact, struggle to reproduce. But other infertile women, or men, adopt children or choose not to have children. Importantly, they do not fail to have good lives because of this fact—the very opposite is true in many (if not most) cases—although they do have to deal occasionally with dumb comments from others, such as whether they are their children's "real" mommy or whether they

have always regretted not having children. Adoptive parents also have to contend with statements about parenthood that ignore them entirely by assuming that all parenthood is biological.

Further social conditions that are relevant to my argument about IVF funding are that adoption is an option for some people—that is, public or private adoption—although adoptions are often expensive. This point applies to many so-called "public" adoptions, as well as private ones.[2]

I argue that because of the nature of IVF (including its cost), the presence of alternatives to IVF, and also the nature of medical necessity, IVF should not be deemed a medically necessary service. To quote from "The Medical Nonnecessity of In Vitro Fertilization":

> Decisions about which treatments are medically necessary cannot be separated from decisions about how important it is that people have the capacity that the treatment seeks to restore or give to patients. In the case of IVF, this capacity normally is procreation. IVF is expensive, carries risks, and is stressful. In my view, [a liberal democratic government like my own in Ontario] should not consider procreation to be so important that it is willing to fund IVF on grounds of medical necessity. Doing so would involve assuming that becoming a parent through procreation is superior to becoming a parent in other ways (e.g., through adoption) or to choosing a life without children. The government cannot endorse such a view without violating its commitments to equality and fairness, and without harming people. . . . (McLeod 2017, 79-80)

It would do the last (i.e., cause harm), in part, "by suggesting that the lives of people who forgo procreation, and perhaps have children in other ways (e.g., through adoption), will be stunted" (78).

These quotations reveal what the theoretical frameworks are that underlie my argument. I develop a theory about medical necessity according to which judgments about medical necessity go hand in hand with judgments about how important the capacity is that the treatment seeks to restore or give to patients. I also rely on a theory about the value of parenthood and procreation according to which procreation is not obviously superior to adoption or to choosing a life without children. In my view, no one—but, in particular, no liberal democratic government—should presume that procreation *is* superior to these alternatives, although one does so in claiming that IVF is medically necessary. (To be clear, I do leave open the possibility that such a government could legitimately provide a subsidy for IVF on grounds other than medical necessity; it would simply have to give equivalent subsidies for adoption and for similarly worthy pursuits by people who are not aiming to have children.)

3. The lens of reproductive justice

As I've noted, a lens of reproductive justice does not inform my analysis of whether IVF is medically necessary,[3] although this is the sort of lens Anne would have used to determine whether insurance coverage for IVF is morally justified. Before discussing how she might have done that, let me give some background on reproductive justice.

The term "reproductive justice" was coined by members of the SisterSong Women of Color Reproductive Health Collective (n.d.), which is based in the United States (Bailey 2011, 726). SisterSong aims to fight against social conditions that severely constrain the reproductive lives of women of color and Indigenous women, as well as low-income women. Believing that

the terms "reproductive health" and "reproductive rights" were too closely aligned with the struggles of middle-income white women for contraception and abortion, members of Sistersong felt that a new term was needed (Bailey 2011, 726-27; Sistersong n.d.). Members also knew that limitations on the reproductive autonomy of low-income women of color were inextricably linked to the social injustice they faced: the discrimination, the poverty, the forced sterilization or contraception, the forced removal of children, the environmental contamination of land, and the like. Wanting a term that could represent what needed to occur for these women, they arrived at reproductive justice.

In striving for reproductive justice, one strives toward the ideal of "complete physical, mental, spiritual, political, social, and economic well-being of women and girls, based on the full achievement and protection of women's human rights" (Ross 2007, citing the Asian Communities for Reproductive Justice [ACRJ] 2005). This definition is everywhere on the internet, but it can be confusing. Why are the *complete* well-being of women and the *full achievement* of their *human* rights required for *reproductive* justice, that is, justice that targets only the reproductive dimension of women's lives? For answers, in particular about the link between reproductive justice and human rights, we do well to turn to Anne's work. For example, she discussed how "the promotion of women's health in particular depends on the interaction of many human rights—including rights to employment, education, information, political participation, influence, and democratic power within legislatures" (Donchin 2004, 319, citing Shinn 1999; see also Bailey 2011, 727). Anne endorsed this "expanded definition of health," which is also found in SisterSong writings (Donchin 2004, 319). She would stress that to achieve full *reproductive* health, as opposed to health in general, women need to have their human rights protected. Without the human right to employment, for instance, women often cannot afford

reproductive health services. Without rights to education and information, they cannot know which reproductive services they might need or are entitled to receive. And the list goes on.

Anne would also emphasize that human rights and reproductive justice must be grounded in a conception of persons according to which persons "are dependent on their social milieu not only to satisfy their most basic physical needs but also to guarantee their self-affirmation and dignity" (Donchin 2004, 314). Rather than being self-affirming, social milieus of racism, classism, ableism, and the like can be very damaging to the self. More to the point, perhaps, they can interfere with people's ability to insist on or advocate for their rights. This view helps to explain why the "complete" well-being of women and girls, including their mental and spiritual well-being, would be necessary for reproductive justice. Being able to carve out their own reproductive paths requires that women and girls are respected as individuals and are free from psychological oppression (including, e.g., race, class, or ability-based *anti*-natalism).

As I've noted, reproductive rights are important for reproductive justice; however, lists of these rights found in literature on reproductive justice tend to be different from those found in the reproductive rights movement or in bioethics (e.g., Robertson 1994; Overall 2012). For example, the SisterSong list includes not only "(1) the right to have a child"—that is, a biological child—and "(2) the right not to have a child," but also "(3) the right to parent the children we have, as well as to control our birthing options" (Ross 2007, 4).[4] Reproductive justice involves protection for this whole trio of rights, along with the social conditions necessary to exercise them. This aspect of reproductive justice—in particular, support for the right to have a child—is clearly relevant to the issue of insurance funding for IVF.

4. Reproductive justice and IVF funding

Let me now turn to applying the lens of reproductive justice to IVF funding (a process that will help to illuminate certain dimensions of reproductive justice, as we'll see). On its website, SisterSong (n.d.) emphasizes the importance for reproductive justice of women having *access to*, rather than merely the freedom to choose, reproductive and other services. The website mentions a number of services, including abortion, "contraception, comprehensive sex education, STI prevention and care. . . adequate prenatal. . . care. . . [and] safe homes." The list does not include IVF, though it is not meant to be exhaustive. Others, including Marcia Inhorn (2016), have said explicitly that reproductive justice requires equality of access to assisted reproductive technologies (ARTs). In her forward to a new book for health care practitioners on fertility, Inhorn states that "ART access is a form of reproductive justice for the infertile" (xiii).[5] She may, indeed, be correct about this fact given the emphasis in the reproductive justice movement on access, as well as on the right to have children.

But consider that even if reproductive justice required access to and, thus, funding for IVF, the question would still remain whether advocates for reproductive justice should insist on such access—that is, *along with* readily available contraception, adequate prenatal care, safe homes, and so on. As we've seen, reproductive justice is an ideal—one of "*complete* physical, mental, spiritual, political, social, and economic well-being of women and girls" (Ross 2007; emphasis added). In striving towards this goal, activists cannot fight for everything at once that might improve the reproductive lives of marginalized women. Rather, they need to set priorities, and decide "*how* reproductive goods and services *ought* to be fairly distributed" (Bailey 2011, 728; emphasis in the original).[6] As feminist philosophers would say, they need a theory of reproductive justice as a form of *nonideal justice*—that is, for a world in which resources are scarce, but also where women face varying degrees of social and other pressures to have

children, not have children, or relinquish the children they have. Rather than propose such a theory here, which is far beyond the scope of this paper, I want to draw from Anne's work in deciding whether insurance coverage for IVF could ever be a form of nonideal reproductive justice.[7] I believe she would have said that this issue is more complicated than it might first appear. Let me explain.

Anne would have insisted that decisions about whether to direct reproductive justice efforts to IVF should take into account what infertility means for women in the community (or communities) in question. She refers to how "barren" women in many non-Western countries

> pay a much higher price for infertility than [women do] in the West, for there the gendered cycle of vulnerability is embedded in social contexts that are often far more constraining than those that affect Western women. Many infertile women are severely stigmatized and ostracized. In some societies they are at high risk for domestic violence, abandonment, divorce, and infidelity. (Donchin 2010, 329)

From a perspective of nonideal reproductive justice, IVF may, indeed, be a priority for these women. Their right to have biological children is strengthened by their interest in not being subjected to such harms.[8]

Anne probably would have said, more generally, that women have a strong claim to access IVF if they live in societies where, as women, they have few alternatives other than biological motherhood for being perceived as "people worthy of respect and recognition," for self-affirmation, or for personal agency and fulfillment (Donchin n.d., ch. 7: 5). In "Procreation, Power, and Feminist Autonomy" (Donchin n.d.), an unpublished, book-length manuscript available on ResearchWorks and ScholarWorks (n.d.), she argues that the desire to have biological children is socially constructed, although the relevant constructions "are not readily

accessible to change by an act of will alone" (ch. 7: 13). She asks, "What kind of claim then do involuntarily infertile women have on society. . . ? What level of services are they in a position to demand as their right" (13)? Although Anne does not fully answer these questions, she does say that infertile women have a special claim on society when their opportunities for flourishing in it are seriously restricted.[9] In communities like these, infertile women may not be exposed to violence or abandonment, yet their lives are still truncated. Hence, they may deserve insurance coverage for IVF as a matter of nonideal reproductive justice. My own argument against such coverage for IVF is meant to apply to societies where the barriers to self-fulfillment for infertile women are not so great (although Anne might have said that I've underestimated what these barriers are like in liberal democracies like Canada).[10]

Anne also made statements, however, that speak *against* the view that IVF should be funded on grounds of nonideal reproductive justice. For example, throughout her work, she emphasized the importance of infertility *prevention* rather than treatment, and often made such claims on behalf of the world's poorest women. In her words,

> Interventions that focus on reversing the effects of infertility are far more costly to both individuals and their governments than preventive care that deals with factors that contribute to infertility, such as access to prenatal care, nutrition, and infectious disease control. Lack of preventive care, in developing countries particularly, intensifies inequalities among the world's women. (Donchin 2010, 329)

She might have insisted that we respect *more* women's right to have biological children if we take this public health approach to infertility. Indeed, rates of infertility are often especially high among poor women, including women in "developed countries," because of "undiagnosed or

untreated pelvic infections," "damaging … environmental conditions," and the like (Donchin 2011, 100; see also Rawlinson and Donchin 2005, 263). Thus, perhaps we would do better to address such causes of infertility rather than inequality of access to IVF.

Anne also asserts, in one of the few statements she made about insurance coverage for IVF, that it does not "speak directly to structural injustices" (Donchin 2010, 331). She viewed such coverage as a band-aid solution to a problem that is not purely individual but also institutional or structural. Assuming that's true about IVF, then funding for it may not be justified according to a lens of nonideal reproductive justice, which would likely focus, above all, on eliminating structural injustice.

In summary, Anne's work provides us with reasons for and against believing that insurance coverage for IVF could be grounded in a nonideal form of reproductive justice. After reviewing her work, I'm inclined to think she would say that such a lens would not permit IVF funding in most societies, but could justify it in some societies—that is, those in which infertility causes women severe suffering.

Before concluding, I want to emphasize that there are aspects of reproductive justice about which Anne said very little, but that are relevant to whether IVF should be funded in most societies or funded equally to adoptions. Examples include the right of same-sex couples to have children (see McTernan 2015) and the right of women to parent the children they have.[11] Let me discuss the latter right briefly since it concerns my argument that governments should not deem IVF to be medically necessary. My view, again, is that doing so would not allow governments to support alternatives to IVF properly, including adoption. Some reproductive justice advocates would, I imagine, express concern about governments supporting adoption equally to IVF or, more generally, to biological parenthood. They would say, instead, that governments need to be

more respectful of the right of marginalized women to parent the children they have, and should provide them with better environments in which to do so. After all, the biological children of marginalized women make up a highly disproportionate number of the children removed from the care of their parents. For example, in 2011 in Canada, Indigenous children made up 48 percent of the 30,000 children in foster care across the country (Aboriginal Children in Care Working Group 2015, 7). Rather than encourage the adoption of these children, the government should focus on preventing their apprehension by providing greater support to Indigenous communities (i.e., better housing and food security, early intervention strategies for families at risk, better treatment for addiction, a more respectful, less racist child welfare system, and so on). It should make these changes before viewing adoption as an appropriate alternative to IVF or other fertility treatments, or before deciding whether to deem IVF medically necessary in light of this alternative.

The above points challenge my view about IVF funding, and although I take them very seriously, responding to them fully would require a paper in itself (i.e., because of how messy the moral worlds of adoption and child welfare are). But let me provide the beginnings of a response here by saying two things: (1) adoption is complicated because the rights of children are at stake, not only the rights of biological parents, and sometimes (not always) adoption is the best way to respect the rights of children to receive adequate parental care; and (2) from a reproductive justice perspective, prevention in the case of the removal of children is definitely important, as is the prevention of infertility, but both of these should probably take precedence over insurance funding for IVF.

5. Conclusion

There is a great deal more to say about whether insurance coverage for IVF could be justified on grounds of nonideal reproductive justice. This is the sort of complex moral and political issue that Anne liked to delve into, and her work provides us with helpful guidance in tackling such topics ourselves. Again, I wish I could have discussed the ideas I've presented here with Anne, although I did enjoy having the opportunity to look through her work and imagine her in front of me, smiling, and telling me about what I might need to think through more carefully.

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NOTES

1. Rather than use the term "biologism," which is common (Baylis and McLeod 2014), Angel Petropanagos (2017) uses "geneticism." The latter is arguably more accurate since the relevant norms favor having children to whom one has a biological link that is genetic, not gestational or merely gestational.
2. In Canada, there are roughly 30,000 children and youths available for public domestic adoption, with roughly 8,000 of them living in Ontario (Niles 2014). The cost of public domestic adoptions is supposed to be zero, but, in reality, many people pay hundreds to thousands of dollars for them. They pay, for example, for a private home study and private parenting classes, because public versions of these services have long waiting lists. (The home study and parenting classes are both government mandated.) Other

people do private domestic or international adoptions, which are also, of course, very expensive.

3. This is not to say that the frameworks I adopted do not overlap with that of reproductive justice.

4. Their list has also included, among other rights, the "right to freely express one's sexuality" (FQPN 2014, citing the Unitarian Universalist Association n.d.), and, more generally, "the human right to bodily autonomy from any form of reproductive oppression" (Sistersong n.d.).

5. See also FemNorthNet (2014), which provides a fact sheet about reproductive justice for women in Canada's North. It expresses concern about the lack of fertility clinics in the North and of public insurance coverage for IVF.

6. Alison Bailey (2011) explains that reproductive justice is not "a complete moral theory," in part because it does not include a theory of distributive justice (728).

7. My hope is that this discussion will move us some way, as feminist philosophers, toward developing a theory of nonideal reproductive justice.

8. In such societies, infertile women are at high risk of abandonment or the like, but so are some children. Where norms of biologism are very strong, children are often abandoned or relinquished for adoption (formal or informal adoption) when they lose a biological parent, especially a father, and their other parent wants to remarry. The new spouse usually will not, and would not be expected to, parent these children (i.e., "someone else's" children). Whether paid IVF is an appropriate response to norms that cause not only infertile women but also children to be abandoned is questionable.

9. In addition, while she writes that changes to social structures and institutions are necessary in such societies, "until our efforts to transform the present world have borne fruit, we ought not to summarily foreclose presently available options" (Donchin n.d., ch. 7: 13). For her, those options may have included IVF.

10. Anne also mentions how high-priced fertility care in some countries encourages "reproductive tourism," which is problematic for a host of reasons, including that it gives "foreigners privileged access to scarce medical resources when a country's own citizens suffer disproportionately high rates of maternal and infant mortality" (Donchin 2010, 328). Such facts might speak, from a reproductive justice perspective, in favor of insurance coverage for IVF in wealthier countries where people would otherwise be prone to engage in reproductive tourism.

11. The former right was mentioned by an anonymous reviewer of this paper. I take my comments in this paragraph to be in the spirit of this reviewer's concerns that funding IVF only in societies in which infertility causes women severe suffering may not be sufficient (i.e., from the lens of reproductive justice).

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