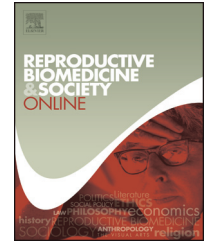




www.sciencedirect.com
www.rbmsociety.com



ORIGINAL RESEARCH

Presuming consent in the ethics of posthumous sperm procurement and conception

Frederick Kroon

Philosophy, School of Humanities, The University of Auckland, New Zealand
E-mail address: f.kroon@auckland.ac.nz.



Frederick Kroon is Professor of Philosophy at the University of Auckland. His main research areas are philosophical logic, ethics and rationality, philosophy of language and metaphysics. He has authored papers in these and other areas for a range of journals, including the *Philosophy and Phenomenological Research*, *The Philosophical Review*, *The Journal of Philosophy*, *Ethics* and *Noûs*. He is on the editorial board of the *Australasian Journal of Philosophy* and is a subject editor for 20th Century Philosophy for the *Stanford Encyclopedia of Philosophy*.

Abstract This paper compares standard conceptions of consent with the conception of consent defended by Kelton Tremellen and Julian Savulescu in their attempt to re-orient the ethical debate around posthumous sperm procurement and conception, as published in *Reproductive BioMedicine Online* in 2015. According to their radical proposal, the surviving partner's wishes are, in effect, the only condition that needs to be considered for there to be a legitimate moral case for these procedures: the default should be presumed consent to the procedures, whether or not the agent did consent or would have consented. The present paper argues that Tremellen and Savulescu's case for this position is flawed, but offers a reconstruction that articulates what may well be a hidden, and perhaps reasonable, assumption behind the argument. But while the new argument appears more promising, the reconstruction also suggests that the position of presumed consent is currently unlikely to be acceptable as policy.

© 2015 The Author. Published by Elsevier Inc. This is an open access article under the CC BY-NC-ND license (<http://creativecommons.org/licenses/by-nc-nd/4.0/>).

KEYWORDS: conception, consent, ethics, moral, posthumous, sperm

Introduction

Posthumous sperm procurement (PSP) and the use of posthumously procured sperm in IVF involve the collection of sperm from a recently deceased male and its use for the purpose of posthumous reproduction. Since 1980, advances in assisted reproductive technology, and in particular the high success rates attributed to intracytoplasmic sperm injection (ICSI), have made PSP followed by IVF increasingly

feasible as a way to allow someone to conceive a child despite the death of the biological father. But it has also highlighted a number of ethical issues, such as whether these procedures shows proper regard for the well-being, needs and dignity of the orphaned child (Landau, 2004) and, more fundamentally, whether proper regard for the autonomy of the deceased always requires his explicit consent to the procedures prior to death. Such issues have been described as among 'the most challenging, difficult, and

<http://dx.doi.org/10.1016/j.rbms.2016.05.003>

2405-6618 © 2015 The Author. Published by Elsevier Inc. This is an open access article under the CC BY-NC-ND license (<http://creativecommons.org/licenses/by-nc-nd/4.0/>).

sensitive ... in the field of medicine' (Bahadur, 2002, p. 2769). This paper discusses a recent and radical attempt to re-orient the ethical debate, one that claims that the surviving partner's wishes are, in effect, the only condition that needs to be considered: the default should be presumed consent to the procedures, whether or not the agent did consent or would have consented.

The paper is organized as follows. The next section briefly describes some of the biomedical background relevant to the ethical discussion surrounding PSP and PSP-based conception, and then outlines the standard positions on consent. Section three describes Tremellen and Savulescu's recent challenge to the standard positions (Tremellen and Savulescu, 2015). I criticize this argument in section four, and then reconstruct the argument, bypassing certain problems identified in my critique and isolating what seem to me to be a crucial assumption underlying Tremellen and Savulescu's view. This allows me to compare their non-standard model of what is at stake with the more widely accepted standard model. The concluding section asks how the debate should be resolved.

The standard debate

PSP is generally performed with urgency following death. Following a decision being made by the grieving parties that PSP is desirable, local legal considerations must be addressed. A medical specialist with the requisite skills to extract sperm from the vas deferens, epididymis or testis, or to perform an orchiectomy, is then required to attend the deceased. Following extraction, the sperm or testicular tissue is transported to a specialist IVF laboratory where it is processed and frozen for future use.

The possibility of successful conception depends on a multitude of human factors, but particularly the viability of the retrieved sperm. Sperm viability is dependent on the time interval between death and sperm retrieval, and possibly also the temperature at which the body has been stored (Tash et al., 2003). Twenty-four hours has been suggested as an appropriate time interval during which retrieval is most likely to be successful (Land and Ross, 2002; Shefi et al., 2006), although the actual use of the sperm in IVF may well not take place until many years later. Once a decision has been made to use the sperm, it is thawed and injected, using ICSI, into oocytes retrieved during IVF treatment. The resulting embryo(s) are then cultured for up to 5 days before transfer into the uterus.

The process above demonstrates why it is important that there not be a lengthy legal process of negotiation or inquiry into whether the process of procuring sperm is allowed to go ahead; delays could make the path to IVF impossible. This does not mean that deciding whether it is permissible to proceed to IVF once sperm have been harvested should also be a quick process, since this decision may depend on ethically sensitive matters that require much more time to resolve. This will be true, for example, if it first needs to be shown that the deceased would have wanted to have a child on the basis of PSP (suppose that the standard of evidence for such a demonstration has been set at a very high level). Note that the constraints that this imposes on the decision process are also likely to be ethical costs, since they are imposed on the deceased's partner at a time when she may

well be under considerable stress. Whether they are seen as costs that should nonetheless be imposed will depend on one's views of the ethics of the situation.

As we will see below, Tremellen and Savulescu reject the requirement that those making the decision need to know that the deceased would have consented to PSP and conception. For many others, however, the only kind of knowledge that suffices is proof that the deceased explicitly consented to the procedures. Crucial to the ethics of PSP and PSP-based conception, therefore, is the question of consent. This is not the only important ethical question, of course. The consequences for any offspring will also need to be considered carefully. Where the child is put at high risk from genetically inheritable problems or is likely to be brought up in an environment that is a clear danger to the child's well-being, there is good reason not to allow PSP-based conception. Some commentators also worry about the more general potential of such a procedure to harm the child (see, e.g., Landau, 2004, and Pobjoy, 2007), while others think the risks are overstated (e.g. Strong et al., 2000; Tremellen and Savulescu, 2015). All agree that more studies are needed to determine the impact on the well-being of children born from the procedure.

Returning to the question of consent, it is clear that the most straightforward way of showing that the deceased would have consented to PSP and conception is to show that he explicitly consented to the procedures before death. This is certainly the test insisted on in most western legal jurisdictions that permit the procedures. Explicit consent in this sense should be understood as informed consent, where this includes competency, disclosure, understanding, voluntariness and consent (Beauchamp and Childress, 2012), perhaps with special conditions placed on the means and depth of disclosure (see especially the discussion in Strong, 2006, and Hostiuc and Curca, 2010). Of course, explicit consent of this type is not intended to override all other considerations. It may turn out that the situation faced by the partner after the man's death is so different that it is no longer likely that he would have consented to having a child under the new circumstances, and in that case a request for PSP and conception may well not be granted. So while explicit consent is considered necessary in most legal jurisdictions that permit the procedures, explicit consent on its own is not considered sufficient.

But some ethicists think that that the test of explicit consent should not even be a necessary condition, because the test is too demanding. Men who die suddenly, for example in accidents, are not likely to have thought about giving explicit consent to such a procedure, even though they may well have wanted their partners to have their child under these circumstances. There may even be some evidence of this: it may be known, for example, that the couple had discussed such a possibility. This has led a number of ethicists to propose another model of consent: implied or inferred consent, the idea that it is enough that the deceased would, on the balance of probabilities, have consented to the procedures had he been presented with the relevant facts pre-mortem and been able to discuss the matter with his partner.

The problem facing such a test of implied consent is obvious, however. As Jones and Gillett point out:

'... the difficulty lies with satisfactorily ascertaining the views of those who can neither confirm nor deny assumptions or inferences

Download English Version:

<https://daneshyari.com/en/article/1090081>

Download Persian Version:

<https://daneshyari.com/article/1090081>

[Daneshyari.com](https://daneshyari.com)