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ORIGINAL ARTICLE

A cross-cultural analysis of posthumous reproduction: The significance of the gender and margins-of-life perspectives

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Abstract The scholarly discussion of posthumous reproduction (PHR) focuses on informed consent and the welfare of the future child, for the most part overlooking cultural differences between societies. Based on a cross-cultural comparison of legal and regulatory documents, analysis of pivotal cases and study of scholarly and media discussions in Israel and Germany, this paper analyses the relevant ethical and policy issues, and questions how cultural differences shape the practice of PHR. The findings challenge the common classifications of PHR by highlighting the gender perspective and adding brain-dead pregnant women to the debate. Based on this study's findings, four neglected cultural factors affecting social attitudes towards PHR are identified: (i) the relationship between the pregnant woman and her future child; (ii) what constitutes the beginning of life; (iii) what constitutes dying; and (iv) the social agent(s) seeking to have the future child. The paper argues that PHR can be better understood by adding the gender

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and margins-of-life perspectives, and that future ethical and practical discussions of this issue could benefit from the criteria emerging from this cross-cultural analysis.

KEYWORDS: brain death, ethics, gender, Germany, Israel, posthumous reproduction

Introduction

Mary Shelley's Dr Frankenstein created the first human being from posthumous tissue and body parts 'snatched' from graves and slaughterhouses. Shelley, like her fictional hero Frankenstein, was fascinated by the newly emerging idea in the 18th century that the transition from life to death could be reversed. The science and literature of the period were both preoccupied with the notion that electricity and other modern technology could revive dead people, prolong life or create new beings. However, since then the monster has also come to symbolize the 'yuck factor' (Kass, 1997) – people's instinctive repugnance towards radical scientific ideas such as cloning, genetic manipulation of organisms or posthumous reproduction.

Posthumous reproduction (PHR) is commonly used to refer to the intentional application of advanced medical technologies to achieve conception, pregnancy and childbirth in a situation where one or both parents is declared dead. It is distinguished from posthumous childbirth, which has been a common tragedy since time immemorial and is well documented in royal family genealogies where fathers died in wars or mothers died in labour (Elliot, 2004). The ancient Greek god Asclepius – god of medicine – can be considered a child born posthumously when Hermes cuts him out of the body of his dying mother Coronis. In the continuation of the Greek myth, Asclepius even revives a dead person. This ultimate power of medical knowledge continues in late-modern ideas of life extension or life creation.

Modern technology has problematized both borders of life. With the introduction of IVF, the beginning of life has left the human body and can occur in a laboratory, raising heated debate about the acceptability of destroying 'pre-embryos' and using embryonic stem cells. Likewise, the accumulated scientific knowledge regarding the different developmental stages of the embryo and the fetus has prompted ongoing deliberations about their moral status. The fact that human gametes as well as pre-embryos can now be frozen and stored further problematizes the question of the beginning of life and its possible manipulations.

At the other edge of the spectrum, the end of life has also become less self-evident. Life-support technologies and medically assisted suicide challenge our moral understanding of the dying human being, and raise critical questions as to whether and how to control the end of life. Modern medical diagnoses such as brain death confront us with new criteria for human death and raise questions of whether such dead bodies can legitimately be used by others (Hauser-Schäublin et al., 2001; Lock, 1995).

Having said that, some very difficult and disturbing situations occur when death and birth come close to one another. Modern medical technology is breaking down the boundaries between the beginning and end of life not only symbolically but very literally, in real-life experiences. Life and death are now interconnected intentionally – unlike the historical cases of posthumous childbirth, which were unplanned. Current cases of PHR involve a search for opportunities to bring a new life into being 'by a parent from the grave' (Hans, 2008). These cases are based on advanced medical technologies that allow for the use of reproductive tissues stored outside the human body in the laboratory (via IVF), or that permit human bodies already declared dead to be kept 'alive' artificially in order to retrieve gametes or sustain the fetus in a female body until birth.

The aim of this paper is to provide a conceptual analysis of PHR and the form it takes in different cultural contexts, with emphasis on Israel and Germany. These two countries, both at the cutting edge of Western medical technology, generally represent opposing poles of professional culture, regulation and policy in the field of biomedicine and specifically with regard to stem cell research, preimplantation genetic diagnosis (PGD), genetic screening and euthanasia (Hashiloni-Dolev, 2007; Hashiloni-Dolev and Shkedi, 2007; Prainsack, 2006; Raz and Schicktanz, 2009, 2016). In the case of PHR, Israeli policy is commonly understood as extremely liberal, whereas German policy is considered restrictive. In the following examination of these societies, the common classifications of which situations constitute PHR scenarios is challenged, highlighting the gender perspective and adding brain-dead pregnant women to the debate, and shows what both of these countries, with their almost diametrically opposed policies regarding PHR, can teach us about the lacunae in each society as well as in the international scholarly discussion of the topic. It will be argued that PHR can be better understood by adding the gender and margins-of-life perspectives, and that future ethical and practical discussions of this issue could benefit from the criteria emerging from this cross-cultural analysis. The analysis is based on a cross-cultural comparison of PHR regulations, analysis of seminal cases and the study of expert and public discussions.

Materials and methods

Comparative methodology is 'a means of investigating the interactions between science and politics, with far-reaching implications for governance in advanced industrial democracies' (Jasanoff, 2005, 15). Comparisons between different national and cultural milieux allow for better understanding of the interplay between formative technological and cultural forces, since the act of seeing the image of one's own culture reflected in and by another has the potential to create fertile epistemological distancing in which the familiar is seen and understood in a new light (Øyen, 2004). Comparative research in bioethics contributes to a more