

Sins of the Fathers: War Rape, Wrongful Procreation, and Children's Human Rights

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This essay considers the contentious and practically important question of whether children born of war rape and forced impregnation can and should be conceived as having their human rights violated by their rapist-fathers. It takes up both conceptual issues and pragmatic considerations related to this important question. I argue that the conceptual obstacles to talking about rapist-fathers violating the human rights of their children can be overcome and that we can usefully conceive the wrong done by them as wrongful procreation, a violation of a child's right to enjoy rights. Moreover, I argue that recognizing these rights and wrongs is urgently necessary and can have a positive practical effect on the lives of war-rape children.

An ancient and horrific aspect of warfare is the systematic use of rape and forced impregnation as tools of war (Brownmiller 1979). Awareness of this ongoing tragedy has increased significantly in recent years, largely due to the sexual violence pervading conflicts in the Balkans, Rwanda, Uganda, East Timor, Congo, Sierra Leone, Liberia, Kosovo, Darfur, and elsewhere. As a result of these atrocities, and through the tireless hard work of activists and advocates for women and for human rights, the international community has recognized rape and forced impregnation as war crimes, as crimes against humanity, and as instances of genocide. International law now clearly and explicitly outlaws these heinous acts, and the Rome Statute of the nascent International Criminal Court (ICC) includes both rape and forced impregnation among the crimes over which it has jurisdiction.

It has proven much more difficult to come to grips legally and theoretically with the wrongs done to the *children* born of wartime rape. The silence surrounding these children, reflecting both a desire to protect them and a widespread denial of their existence (McEvoy-Levy 2005), has been hard to break. More worryingly, the emerging international discourse of genocidal rape and forced impregnation has inadvertently fueled the conceptualization of fetuses and children as tools or indirect perpetrators of genocide (Allen 1996; Carpenter 2000b; Fisher 1996). The difficulty is not in recognizing that the children suffer, but rather in reckoning what to make of the fact that their suffering usually occurs in and through

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their birth (maternal) communities, where they are frequently stigmatized, neglected, or rejected. This reality contradicts our commonsense intuition that it is the rapist-fathers who bear moral responsibility for the children's plight and complicates efforts to hold the rapist-fathers responsible for human rights violations endured by the children.

Indeed, human rights advocates have openly worried about whether the children born of wartime rape really are victims of their rapist-fathers. There are three reasons for this worry. First, while the rapist-father violates the woman's rights in the rape through which the child is conceived, it is not obvious how this act wrongs the child; after all, it is through this act, however horrible for the mother, that the child comes into existence. Second, because the child does not exist at the time of the rape, it is not clear whether any wrong the child suffers could be a violation of his/her rights.¹ Finally, because the wrongs the children actually suffer are usually inflicted by their birth communities or by the states in which they are born, some advocates fear that a human rights approach unavoidably implies the child's right never to have been born. Such an implication could only add to the stigmatization of these children and exacerbate their suffering.

In this essay I shall argue that a human rights approach to children born of wartime rape is urgently necessary and demonstrates that the philosophical objections to thinking about rapists as violating children's rights can be overcome. The essay has four sections. The first discusses the practical need to address war-rape children in a human rights framework. The second section takes up the questions of whether an act responsible for a person's existence can harm that person and of whether it makes sense to talk about violating future persons' rights. These problems have been extensively discussed in the philosophical literature, though in very different contexts; borrowing from that literature, I show that actual future persons' rights can be violated, including through acts responsible for their existence. I also try to show how prior philosophical consideration of these questions has gone wrong. In the third section I develop an account of *wrongful procreation*, a violation of a child's *right to enjoy rights*. These two notions provide a conceptual framework for understanding how rapist-fathers violate the rights of their children, a framework that could be incorporated into international law and policy. The essay concludes by showing how adoption of this framework could make a real difference in ameliorating the suffering of war-rape children.

Before beginning, I want to address a likely objection to the entire enterprise. Students of children in conflict situations might object that my treatment is too narrow. There are many ways of being a "war baby" (Grieg 2001); focusing on children born of war rape excludes these other children, for whom distinct human rights challenges exist. Further, children of war rape themselves exist in numerous different contexts. The social, cultural, and political milieu in which the conflicts, the rapes, and the births take place affects how rights questions play out, as do the actions of states and international actors, including the media and aid agencies. Finally, focusing on the rapists obscures the responsibility of other actors: of the militia and military commanders who carry out policies of systematic rape and forced impregnation and their political masters; and, of the birth states and communities whose policies and prejudices directly harm many war-rape children. Besides, since it is obvious that the rapist-fathers are in the wrong, why bother trying to shoehorn this particular tragedy into a human rights framework at all?

These are valid concerns. I cannot begin to shed light on the myriad conceptual and policy issues surrounding the rights of children in conflict situations. Still, recognizing the validity of such concerns does not entail abandoning the project. While it is impossible to know what impact adoption of the proposed framework would have on other children in conflict situations, it seems as likely that it might prove helpful as harmful. Perhaps especially in immensely complex cases like these it makes sense to deal separately with distinct

aspects of the larger problem rather than try to devise totalistic solutions whose unavoidable abstraction creates problems of its own. Further, as I shall argue below, a properly specified theory of wrongful procreation can actually help to establish broad responsibility for violations of children's rights and to leverage change in the children's birth communities. The pragmatic reasons for adopting a human rights approach are my subject in the first section.

Children Born of War Rape

Rape and forced impregnation are common weapons of war. They are also used strategically and systematically in carrying out campaigns of intimidation, degradation, and genocide. In some instances women are held in camps and raped repeatedly until they become pregnant. Soldiers often make clear throughout this ordeal that in forcing the women to conceive they hope to create a baby (a son) who will infiltrate, undermine, or destroy the mother's group. In many instances, fetuses conceived through such rapes might be aborted, though sometimes women are held until abortions are no longer legal or feasible. Although few specifics about the numbers and fates of war babies are known (Carpenter 2005; Daniel 2005; Harris-Rimmer 2005), there is abundant anecdotal evidence demonstrating that they are widely viewed as "children of the enemy"² and that they are routinely subjected to neglect, abuse, stigmatization, abandonment, and even infanticide (Niarchos 1995; Stigalmeyer 1994; also Carpenter 2005). It should be emphasized, however, that many such children avoid these unhappy fates, whether through luck, adoption, or silence about their origins.

My aim in this paper is to establish that war-rape children are victims of human rights violations committed by their rapist-fathers. Is it necessary to prove so much? Clearly the rapists wrong the children's mothers. Yet if the children *do* experience the common harms just described, it is typically at the hands of their own mothers or their birth states and communities; the rapists' culpability with respect to the children is indirect, though their responsibility is plain enough. Besides, since not all children conceived through war rape experience these harms, a human rights approach risks stigmatizing all such children, doing more harm than good. There are at least four related reasons—legal, political, economic, and cultural—to link war-rape children to their rapist-fathers in a human rights framework. First, while the rapist-fathers' moral responsibility might be evident, legal mechanisms for holding them accountable are lacking. This lack helps to obscure the much wider networks of responsibility involved in these cases. The rapist-father is the only link between the child and those who adopt rape and forced impregnation as deliberate policy choices and strategies of genocide (Allen 1996; Daniel 2005; Fisher 1996; cf. Brownmiller 1979). This wider structure of responsibility has been recognized in treaties and statutes condemning rape and forced impregnation. In such cases, not just the rapist but commanders and politicians who imagine and orchestrate the rape policies are potentially culpable. There is no analogous culpability in cases of war-rape children; fathering a child through rape is not itself a crime in international law. Similarly, courts and tribunals cannot pursue the rapists or their superiors for harm suffered by the children created through the rapes. This legal inability generates political and economic difficulties as well. Politically, the children are often simply forgotten when it comes to policies regarding peace, reconstruction, and reconciliation (McEvoy-Levy 2005). Their birth states are sometimes unwilling to recognize them as full citizens or even to acknowledge them,³ much less provide structured assistance in dealing with the obstacles facing the children. Chief among these obstacles is poverty. Frequently, children and their mothers are rejected by the birth or maternal communities, shunned by families and neighbors; the women deemed unmarriageable (Carpenter 2005; Daniel 2005;

McEvoy-Levy 2005). In many societies where war rape occurs, economic opportunities in general, and for women in particular, are already quite limited (Apio 2005; Baldi 2005). Establishing that rapist-fathers violate the human rights of their progeny might facilitate development of policies and institutions to hold them responsible for their children's welfare.

It might be argued that measures like these would be redundant with, or could be folded into, support given to the mothers. Two factors tell against such an approach. First, the frequency with which war-rape children are abandoned makes the apparent redundancy less redundant than it initially seems. Second, and more importantly, treating the children as appendages of their mothers, as indirect or secondary victims, contributes to a discourse in which the children can easily become invisible (Carpenter 2000b). Such a discourse also obscures the tragic but crucial fact that the children's mothers often neglect or reject them. Reaching the children through their mothers cannot suffice.

As this discussion shows, most of the direct harms and deprivations endured by children born of war rape paradoxically occur in their maternal communities. The dominant discourse surrounding these children constructs them as "children of the enemy" or "children of hate" and represents them as tools or agents of genocide, a sort of nascent fifth column within an already victimized community (Allen 1996; Carpenter 2000b; Fisher 1996).⁴ Media reports and governmental policies and pronouncements often reflect and reproduce this conceptualization and often manipulate it (D'Costa 2003; Weitsman 2005). This discourse frequently stigmatizes the children, driving much of the neglect, abuse, and deprivation they experience. The paradox is that maternal communities—even mothers themselves—accept the same patriarchal logic of identity as the rapist-fathers: that the father's identity becomes that of the child (Carpenter 2000b).⁵ Establishing children as *victims* of the rapists might help to break this perverse cultural logic, to change the stigmatizing discourse surrounding these children within their communities, in the media, and among state officials and aid workers. Doing so requires showing that the children's human rights have been violated without constructing the violated right as an equally stigmatizing "right not to be born."

War-Rape Children, the Rights of Future Persons, and the Nonidentity Problem

In this section I address the two principal *conceptual* difficulties in recognizing war-rape children as victims of their rapist-fathers, problems concerning the rights of future persons and the so-called nonidentity problem. In so doing I hope both to resolve those difficulties satisfactorily, at least as they pertain to children born of war rape, and to improve upon prior philosophical approaches to these questions.

Carpenter is among the first theorists to have struggled with the problem of children of war rape directly. She argues that these children cannot be classified as victims of *rape* and could only be classified as victims of the *rapist* indirectly, through a concept like forced impregnation (Carpenter 2000b: 462). Carpenter objects to notions like "forced birthing" and "forced maternity" as legal/moral concepts for understanding the wrongs done to war-rape children. On her view, "while forced maternity is a crime against the mother, birth of a child can never be a crime against the child, for this is the event that brings about her status as... [a] rights bearer" (Carpenter 2000b: 463). There is good reason for this: to link the wrong to the child's birth implies that somehow the child has a right not to be born or that it would have been better had the child never been born. While the right not to be born has been mooted in debates surrounding abortion of fetuses afflicted with serious medical conditions (Feinberg 1986; Shiffrin 1999; Steinbock and McClamrock 1994; Vehmas 2002), positing

such a right in cases of war-rape children would ultimately only add to and reinforce their stigmatization.

We can usefully frame the conceptual puzzles surrounding war-rape children and their rights within the philosophical debate over the rights of future persons and the nonidentity problem, which as Smolkin (1999: 195) describes, arises

when a person performs an act that is a necessary condition for some person to come into being, and the act will (foreseeably) result in that future person having a life that contains certain serious hardships but that is, on balance, worth living. Our response to such actions is that they are (at least, *prima facie*) morally objectionable, but it is puzzling what the nature of this objection could be, since the act is not worse for the person that comes into being.

The stipulation that the life of the future person be, on balance, worth living establishes that the act in question is not “worse” for the person that comes into being as a result of it—that is, that existence in the life in question is preferable to nonexistence. (Again, severe prenatal deformity is the best example of a case where the life in question might not be worth living.)

Within this debate, several key examples have become commonplace vehicles for discussion of the broader points at issue. One is Kavka’s (1981) “slave child.” In this example, a couple who planned to have no children is offered \$50,000 to produce a child they agree to sell into slavery; the contract regarding this sale is binding and enforceable. Details of the case vary, including whether the couple intend to use the money to purchase a yacht or to benefit a favorite charity, and whether, once the child is born, they make good-faith (though futile) efforts to prevent execution of the slavery contract. This example is designed to show that, even if the child’s life is (by stipulation) worth living, its parents are wrong to conceive a child in such circumstances.⁶

Another famous example, first introduced by Parfit (1984), concerns a 14-year-old girl who decides to conceive a child despite her understanding that in doing so now, rather than waiting, she will make life for her child and herself much more difficult—and less advantageous—than it would be if she waited until she were older, more mature, and better equipped financially to become a parent. Again, assuming that the child of the 14-year-old has a life worth living, the puzzle is how it can be a wrong to *this* child to have been born, even under less than auspicious conditions, given that had its mother waited to conceive, *another* child, rather than this one, would have been born. As a life worth living is clearly preferable to nonexistence, it seems that the girl has acted irresponsibly and perhaps recklessly but that she has not wronged *this* child to which she gives birth. In a related example, also introduced in a different form by Parfit (1984) and modified by others, a woman suffers from a temporary condition that will cause any child she conceives during her illness to be born with some (moderate) disability. If the woman conceives, does she wrong the child she bears, again given that by waiting a few months she could have conceived a (presumably) healthy child? If her condition is permanent, does that fact change our assessment of her actions even though the result—the birth of a disabled child—is the same? What if she discovers the disease after becoming pregnant, and the issue is whether to take a costly (but not unaffordable) drug that would eliminate the risk to the child, which would otherwise be one in two (Hanser 1990)?

A final famous example discussed by several authors is called (once more after Parfit 1984) the Risky Policy.⁷ In this case we (presently existing people) face a choice between two energy policies, one of which would be mildly worse for us but greatly beneficial to

future people, and one that would benefit us somewhat but would pose the risk of a dire catastrophe befalling some future generation (due to an accident involving toxic waste). Whatever policy we choose will determine the identities of people in future generations; different people will be born if we select the Risky Policy than those who would be born if we choose the safe policy. If we choose the Risky Policy, do we harm the future individuals who might suffer from the potential catastrophe—assuming their lives are, again, on balance worth living? If so, what is the nature of this wrong?

These cases bear striking similarities to the case of war-rape children. The children clearly do not exist at the time the rapes occur, introducing the puzzle about the rights of future persons. In addition, were it not for the act in question (the rape) the child said to be harmed by that act would not exist, introducing the nonidentity problem. Further, as with the Risky Policy, the harms suffered by the child, while terrible, are probabilistic; we cannot be sure that any particular child will experience these harms (though we know that very many will). I shall rely on these examples and on arguments developed in connection with them in working through the difficult conceptual problems raised by the case of children born of war rape. I shall address them separately, even though they are frequently conflated, beginning with the puzzle about the rights of future persons. Carpenter's argument that "the birth of a child can never be a crime against the child" is consistent with the view widely held by philosophers, who, with Woodward (1986: 821), typically "agree it is a necessary condition for a right or an obligation to be violated that someone holding that right or obligation actually exist." Since I do not want to become mired in the abortion controversy here, I shall work with an even more stringent version of the same thesis: that prior to an individual's conception, that individual can possess no rights. I shall call this the *existence condition*.⁸ The existence condition derives much of its plausibility from its seemingly straightforward, commonsensical quality: nonexistent persons have no rights because having rights presumes the (existence of the) person who has them. When the wrongful act (the rape) is committed, the resulting child does not yet exist, and therefore by stipulation it cannot possess any rights that might be violated by the rape (or the rapist). Besides, as Carpenter and others note, linking the crime and the child through birth risks implying that the child's birth itself is wrong.

One approach taken by philosophers has been to move in the direction of parental or procreative duties or obligations when thinking about the moral questions related to birth in cases like the slave-child or the 14-year-old girl (Kavka 1981; Steinbock and McClamrock 1994; Vehmas 2002; cf. Woodward 1986). This move, however, has two limitations when considered in connection with children of war rape. First, it presumes parents making an informed and voluntary choice about procreation, a manifestly inapposite presumption in cases of rape; second, this shift to parental obligations (which rapists anyway clearly abrogate) moves us further from resolution on questions involving children's rights. Rights-based approaches (Archard 2004; Smolkin 1999) offer little guidance because they tend to assume what ought to be demonstrated: that the existence condition can be overcome or set aside. If the nonexistent (at the time of the rape) child cannot have rights, there can be no question of whether someone has violated those rights.

In my view, while the existence condition is correct, it is not the appropriate principle on which to focus in cases like that of war-rape children. Instead, it seems that the more salient question is whether it is possible to violate the rights of future persons—or, to put it differently, whether nonexistence at the time an act occurs or a chain of events is set into motion obviates any rights claims by future persons. After all, the point at issue in such cases is not whether some persons who do not (yet) exist have rights *now*; the question is rather whether it is possible, by an action (or omission) done now, to violate these future

persons' rights. For simplicity, I shall restrict my discussion to the rights of *actual future persons*, those who will exist regardless of the action or directly and immediately because of it. Actual future persons, on this usage, are distinct from merely potential persons whose existence will be conditioned (though not immediately determined) by the action.⁹ It seems true and correct that present actions *can* violate the rights of actual future persons.

To see this, consider an example given by Feinberg (cited in Shiffrin 1999: 137): a bomber hides an explosive device set on a seven-year timer in a kindergarten. Few of the people who will be maimed or killed by the ensuing explosion presently exist, but the bomber sets into motion a chain of events that leads to the foreseeable and intentional violation of rights of the actual future persons who will populate the kindergarten.¹⁰ We can contrast this kindergarten bomber with a bomber who sets a similar device to explode tomorrow in Grand Central Station. The only obvious distinctions between these acts are the location and the setting of the timer; neither distinction can make a moral difference. In both cases, a present act or a chain of events set into motion by a present act can lead directly, foreseeably, and intentionally to the violation of actual (future) persons' rights. The present nonexistence of the future victims of the kindergarten explosion makes no moral difference; they will be rights-bearing persons when the bomb detonates. This example illustrates that the existence condition need not be refuted to establish that it is possible (now) to violate the rights of actual future persons.

An important difference distinguishes the Risky Policy from the cases of the kindergarten bomber and the war-rape child. In the former the foreseeable rights violations set into motion by our policy choice are unfortunate byproducts of that choice.¹¹ In the latter, the precipitating acts are committed *precisely because* they are calculated to lead to circumstances entailing probable rights violations. Often war rape and forced impregnation are parts of a wider political policy of genocide orchestrated by military or militia officers and civilian politicians. Moreover, the policy's cruel effectiveness depends upon the perpetrators' expectation that the children will in fact be stigmatized, be neglected, and be rejected by their birth communities. In such cases, where bringing about the conditions in which the rights violations are likely or certain to occur partly motivates the act, it seems warranted to conclude that the act violates the rights of actual future persons. Whether or not we can speak of rights violations in cases like the Risky Policy is a difficult question, but one whose answer seems inconsequential to the foregoing argument, which emphasizes the calculation or intention in the act resulting in those violations.

We cannot dodge the nonidentity problem altogether, however, since one crucial respect in which the kindergarten bomber and war-rape child cases differ is that the rape, which precipitates the violation of the future child's rights, is also the act that brings the child into being. Some philosophers have concluded that this distinction makes a difference because an act that leads to a future person's existence confers such a significant benefit (the individual would not otherwise have been!) that it is hard to see how that action can count as a wrong or harm, on balance, with respect to that individual. Some similar intuition seems to animate Feinberg's (1986) analysis of the counterfactual element in harming and Parfit's (1984) analysis of the Risky Policy, among others. Parfit even suggests that if we could ask the child of the 14-year-old girl he would, since his life is on balance worth living, deny that his mother wronged him and, if he were told that she might have violated his rights, waive any such rights that he might have.¹² So, one might ask if an action responsible for a future person's existence can simultaneously violate that person's rights. Harman (2004: 100ff.) replies that showing how the benefits from an action outweigh the harms in some particular circumstances is not the same as showing that these benefits somehow nullify the wrongs they cause or somehow render them permissible—except perhaps on certain utilitarian

views. Hanser (1990: 62–63) goes further, actually denying that there *is* such a thing as the nonidentity problem as Parfit understands it. When an actor, through his actions or choices, is responsible for people suffering genuine harms he will harm them in the relevant moral sense regardless of whether the action or choices in some way lead to their existence.

These replies are persuasive, at least in cases involving actual future persons. This qualification is important because in cases like the Risky Policy, which involve merely potential persons, one might plausibly argue that the temporal distance from the act responsible for the identities of future persons and the unintentional nature of the harms that flow from that act make claims about rights violations too strong. Harman and Hanser claim too much, I think, in suggesting that such factors have no moral significance. This is a complex question, and I do not want to take a position either way with respect to whether it is possible to violate the rights of merely potential persons (though Schwartz's [1978] argument about the diminishing persuasiveness of these claims over time is compelling). I merely register this qualification to put my own argument on the firmest possible ground. *At least* in cases involving actual future persons, the dual effect of an act—that it both wrongs and brings into being—does not negate the wrongs in question.

There is one further wrinkle, however. Hanser (1990: 69) concludes his article refuting Parfit by considering a special class of actions he describes as instances of *wrongful procreation*. In his view, “conceiving a child... becomes morally problematic when the child predictably will exist in a state that it is bad for him to be in” and the “badness” in question is not comparative; that is, it is not assessed in comparison to other states (such as nonexistence) in which the child might have been (Hanser 1990: 70). Discussing the example of the diseased mother whose pregnancy leads to the birth of a disabled child, he argues that because the act that produces the child (the pregnancy) is not what causes the disability (the disease does this), and because that act brings the child into existence and in this sense benefits the child, the mother's decision to conceive despite her diseased condition is “entirely different” from the choice for the Risky Policy. In Hanser's view, acts of wrongful procreation are difficult (at least in part) because of features they possess by virtue of being intrinsically reproductive acts. There is, he concludes, a problem explaining what is objectionable about acts of wrongful procreation (though it is not Parfit's nonidentity problem; Hanser 1990: 69).

Hanser *is* quite clear about why acts like conceiving a child in this case are morally objectionable; however, they lead to a child existing in a state that is bad for her to be in. He offers two reasons for thinking that wrongful procreation might be particularly problematic, however. The first is that the act in question—the pregnancy, in his example, or the rape, in mine—does not cause the harm. Rather, it is the disease, or the actions of the child's mother or birth community, that directly cause harm, though the original act is of course relevant. As a result, he maintains, it is difficult to specify where the wrong lies in such cases. With respect to this problem, however, the analogy with the war-rape child is imperfect. A better analogy is one in which the person gives the mother the disease intentionally. In such cases Hanser allows that the person who knowingly transmits the disease would bear (at least partial) responsibility for the child's bad condition. Here, the disease-giver's intention to cause the disease is directly relevant to and directly analogous with the rapist's intention in cases of war rape or forced impregnation. Would it make a difference if the disease-giver were also the child's father—say, an HIV-positive man who intentionally infects the mother in attempting to impregnate her and infect the future child? Only if—and this is Hanser's second reason for thinking that wrongful procreation might be problematic—there is something intrinsic to reproductive acts that would make them morally special in this way.

It is hard to know what this thing could be. One might imagine that because parental responsibility for existence is so direct and immediate it takes on a different moral character from the responsibility imagined in the Risky Policy example. Yet such an argument would also seem to prove too much, making room for parents to invoke the benefits they convey upon their children in visiting all kinds of wrongs upon them: that “you are the fruit of my loins” is not the kind of logic that rises to the level of a moral justification for a beating. Still, one might object, the beating is not the act that causes the child’s existence. True, but this rejoinder only brings us back to the search for the mysterious factor or quality about reproductive acts that makes them different in the relevant moral sense. It might be that reproductive acts merely seem different because the considerable benefit of existence “rubs off on” the act itself, covering it with an illusory moral veneer. All of the cases usually invoked in these debates involve voluntary reproduction and take for granted that the benefit of existence flows from some beneficence on the parents’ (mother’s) part. The case of war-rape children dispels any overly romanticized notion of reproduction and procreative choices. War-rape pregnancies and births soberingly remind us that not all procreation is voluntary, never mind beneficent. Rape with the calculated intention to create a child whose human rights will be violated shows that some acts of reproduction can be deliberate, malicious, even sadistic (Feinberg 1986: 170–171). If there is some other special moral feature of procreative acts, the burden of proof lies with its proponents to adduce evidence or argument for it; until they do, I find no reason to regard wrongful reproductive acts as compellingly different from other morally objectionable actions (cf. Harman 2004: 95). There is thus no obvious moral or philosophical obstacle to conceiving rapist-fathers as guilty of violating their future children’s human rights.

Wrongful Procreation

If the preceding arguments are sound, the conceptual worries plaguing efforts to think about the human rights of war-rape children can be abjured. It is possible to violate the rights of actual future persons through acts done now, even through acts that are also directly and immediately responsible for that person’s existence. In this section I consider the nature of the violation and of the right(s) violated. After briefly considering relevant arguments, I shall offer a definition of *wrongful procreation* that specifies when procreative acts violate a future child’s *right to enjoy rights*.

Philosophers who have wrestled with the rights of future persons and the nonidentity problem have proposed numerous ways of understanding how present acts harm future individuals. Both Kavka (1981) and Woodward (1986) focus on why actors are wrong to act in the ways they do in such cases but never clarify whether, in their respective views, the actors violate the rights of actual future persons. Human rights jurists, scholars, and activists have similarly attempted to make sense of the wrongs done to children of war rape. Most of the discourse surrounding these children focuses on the forced impregnation, enforced pregnancy, and forced maternity experienced by the mothers; however, none of these notions adequately captures the wrongs done to the child (Carpenter 2000b: 462ff.; 2000a). So-called forced birthing (Wing and Merchán 1993: 20) at least makes it possible to include the child within the concept, although its dependence upon notions of forced impregnation and enforced pregnancy makes it problematic in the same ways as those concepts are. Besides, as Carpenter (2000b: 463) notes, this label “implies that the crime is in allowing the child to be born at all.” She proposes “birth-by-forced-maternity,” which she defines as a crime that “encompasses both forced impregnation and enforced pregnancy

together (but not forced impregnation that results in an abortion). It is through forced maternity, not forced impregnation directly, that the child comes into being as a rights-bearer and has claims to make on the community” (Carpenter 2000b: 463). The problem with “birth-by-forced-maternity” is that, remaining focused on the wrongs done to the mothers, it provides no conceptual route to consideration of the child’s *rights*.

Two scholars, Smolkin and Archard, have developed rights-based accounts of the wrongs done to future persons by present actions. While both accounts are flawed, both are instructive and can help to guide our reflections. Smolkin (1999) argues that future persons have a claim that some acts necessary for them to come into being wrong them nonetheless. He describes a “complaint-warranting condition,” one in which a person is caused to exist with a life that is not flourishing at some stage, in which the (future) person is unable to attain some key element of well-being (Smolkin 1999: 202–206). This approach is lacking in three respects. First, it relies on a conception of human flourishing, and such conceptions have proven notoriously contentious. Second, and closely related, Smolkin’s account is too permissive, at least from a rights-based perspective, because there are many respects in which a life might not be flourishing (and thus complaint-worthy) but might not reflect the violation of any rights. So, a child conceived in an unhappy home might grow up melancholy or struggle with interpersonal relationships, but it is not clear that the child’s rights have been violated (though it might be the case that he/she has been harmed, or wronged, or both). Finally, the complaint-warranting condition emphasizes acts resulting in harmed states of a certain kind but omits, dangerously in my view, any element of *intent* in creating those harmed states. Smolkin’s (1999: 204) example of the Acme Chemical Corporation (a variation on the Risky Policy case) indicates that in his view a company whose toxic pollution causes a child to develop cancer creates a complaint-warranting condition. As this example makes clear, Smolkin is struggling to resolve the nonidentity problem, in which acts that are responsible for one’s existence include acts like choosing the Risky Policy, which have an eventual and indirect effect on who is born and who is not. Because it remains unclear whether rights violations (as opposed to harms and wrongs more generally) can occur in such cases, Smolkin’s account includes more than a rights-based account can confidently comprise.

Another rights-based approach is proposed by Archard (2004: 404), who describes what he calls the *birthright*: “if a child should be guaranteed a set of rights then no child should knowingly be brought into existence lacking the reasonable prospect of enjoying those same rights.” It follows that any child has a right “not to be intentionally and knowingly conceived with the reasonable prospect of not enjoying a life above a certain threshold” (Archard 2004: 405). This proposal clearly avoids the intentionality problem raised in connection with Smolkin’s account. Further, its emphasis on conception limits difficulties related to the nonidentity problem. Still, there are two potential problems with Archard’s account, one concerning the breadth of his notion of intentionality and one to do with the idea of a “threshold.” The more minor problem is the threshold. While Archard (2004: 406) prefers a threshold linked to rights—specifically, those guaranteed to children under the United Nations Convention on the Rights of the Child (CRC)—the very idea of a threshold reopens the way for net-benefit comparisons or “all-things-considered” judgments about whether reproductive acts harm children. Especially if we conceive human rights as interdependent and indivisible (see Shue 1996), the violation of any fundamental right threatens all of them, making the threshold unnecessary.

The second and more serious problem concerns Archard’s (2004: 406) understanding of intentionality. He has “no doubt,” for instance, that “deliberately conceiving a child who will be born to desperate social and economic circumstances violates that child’s

birthright.” I am less sure, primarily because of my uncertainty regarding what is meant by “deliberately” and how we should evaluate that notion morally. In the case of war-rape children, as in the slave-child case, the reproductive act creates a child that the actor knows and intends to be unable to enjoy his/her rights. That intention is in part what motivates the act. In many cases of children born into dire poverty, while the parents might conceive *on purpose*, as it were, it is no part of their *intention* that their child suffers human rights violations, even though its suffering them is likely and foreseeable. This case, to my mind, mistakes something important about what it means to violate someone’s rights and *does* invite precisely the kind of net-benefit comparisons (is this life of poverty worth living?) that rights-based accounts ought to avoid.¹³

Despite the drawbacks of Smolkin’s and Archard’s accounts, they point toward a more tightly circumscribed and strictly intentional account of *wrongful procreation* (I will adopt Hanser’s term) that captures the wrongs in cases like that of the slave child and the war-rape child. Wrongful procreation consists in *intentionally causing conception or pregnancy calculated to result in the birth of a child likely to suffer human rights violations*. The right that wrongful procreation violates I call the *right to enjoy rights*. The right to enjoy rights is enshrined in Article 2 of the Universal Declaration of Human Rights (UDHR), which states in part that “everyone is entitled to all the rights and freedoms set forth in this Declaration. . . .” Any action deliberately undertaken with the intention of creating a person unable or unlikely to enjoy his/her rights itself violates those rights.

Skeptics might ask whether the proposed right to enjoy rights is not paradoxical, even circular.¹⁴ The violation of a person’s right to enjoy rights would seem to entail that the person does not, after all, possess the right and that no action by another person could, therefore, violate it. If a person *does* have the right, in the manner of what Archard refers to as a birthright, then it would seem that no action by another person could nullify it and there could be no ground for holding anyone accountable for violating the right. This objection points to what Donnelly (2003: 9) calls the “possession paradox.” As he puts it, “‘having’ a right is of most value precisely when one does not ‘have’ (the object of) the right—that is, when active respect or objective enjoyment is not forthcoming.” One *possesses* a right as a necessary condition of its being violated; that a validly held right exists is inherent in the notion of violation. Again, according to Donnelly (2003: 10), having a right to X is to be especially entitled to X, whether or not the law is respected and whether or not others comply with the moral principles that establish your right. Further, the objection equates *violation* of a right with *nullification* of it and in so doing misses what rights are. If one is arrested for criticizing the government, one’s right to free speech has not been nullified; it has been violated. If violation entailed nullification, no one’s rights could in principle be violated; rights would become meaningless.

The skeptic might respond, however, that the right to enjoy rights is different from rights like free speech; like Archard’s birthright, it seems to suggest a right people have no matter what. What could it mean to violate such a right? Again, the confusion rests in part on the ambiguity in “having” a right. One can possess a right without enjoying the object of that right, that is, without actually benefiting from the thing the right promises or guarantees. To enjoy the right to free speech is *not* to be arrested when criticizing the government. If one is arrested, the right is violated (its enjoyment is infringed); it is not nullified (one still possesses the right). As for the idea of an inviolable birthright, one that a person possesses no matter what, *all* human rights fit this definition—that is what it means to call them *human* rights. Describing them this way emphasizes that they belong to all human beings without condition or qualification. The right to enjoy rights, the Article 2 entitlement to all the human rights and freedoms, merely underscores this point. It is a

particularly useful formulation in cases involving actual future persons, however, because it clarifies their right to enjoy all of the human rights and identifies actions intended to violate that right as morally equivalent with the violation of an existing person's rights.

This observation leads to a second possible objection to the account I have provided here, which captures the important element of calculation in wrongful procreation. On my account the wrong against the child consists not merely in its rights being violated in fact but also in the *intention* of creating it with a life in which it will be unable or unlikely to enjoy its human rights. Such use of procreative power is not merely irresponsible or negligent but rather, to again use Feinberg's terminology, deliberate, malicious, and sadistic. The objection concerns whether it is possible to establish that war rapists do in fact have the intention that the definition of wrongful procreation attributes to them. Undoubtedly it can be in many cases. As we have seen, war rape is often not an isolated action but rather part of an orchestrated policy or strategy of intimidation and humiliation. Gang rapes and repeated rapes, sometimes carried out in camps designed to ensure the pregnancy of inmates and birth of babies, are frequently carried out on orders and with orchestration from military and political officials. Certainly in such instances there can be no question about the intention of those involved—whether rapists, camp guards, or figures of authority. Establishing intentionality on this basis is, admittedly, imperfect: it will underestimate the number of individuals whose actions in fact constitute wrongful procreation.

Wrongful Procreation and the Rights of War-Rape Children

It remains to consider broader objections to the proposed account. Two loom large: the possible implication that the child should never have been born, and the practical problem of whether such an account will enhance our capacity effectively to address the ills suffered by many children born of wartime rape. In lieu of a conclusion, I shall consider these important objections in closing.

Wrongful procreation might seem to presume that all children born of war rape necessarily suffer human rights violations as a result of the circumstances of their conception. It might thus also seem to accept and to replicate the logic of the perpetrators of systematic war rape and forced impregnation and to absolve the child's birth community of its responsibility for its direct violations of the child's rights. Moreover, the stigma associated with children of war rape would be exacerbated if it were widely held, in the child's community or by the media or the government, that these children should never have been born.¹⁵ These are quite serious concerns, yet none seems decisive against the proposed notion of wrongful procreation. First, wrongful procreation follows Carpenter's suggestion in locating the wrong to the child in the circumstances of its conception—specifically, in the actions and intentions of the perpetrators. Wrongful procreation does not follow consequentialist accounts in linking the wrong to an assessment of whether the child's life is on balance worth living. The advantage of a rights-based approach to this and similar problems is that because it locates the wrong in the perpetrator rather than in any condition of the victim, it can never suggest that a child should not have been born. This rights-based approach also allows for the recognition that not every war-rape child will be a victim of human rights violations. It does presume, however, that it is always wrong to cause conception or pregnancy with the intention that the resulting child will be unable or unlikely to enjoy its rights, regardless of whether that intention is realized. The appropriate analogy is with attempted murder, which is wrong even though it fails and despite its intended victim remaining ignorant of the attempt. Wrongful procreation could be prosecuted without ever identifying the child.

Recognizing that children of war rape are likely to suffer human rights violations does take into account the logic and reasoning that informs campaigns of systematic rape and forced impregnation. It does not, however, condone that logic; rather, one aim of establishing wrongful procreation as a human rights violation is precisely to repudiate it, to mark it as offensive to the collective conscience of humanity. In doing so the proposed framework *implicates* the child's birth community, whose beliefs and behaviors lead directly to violations of the child's rights and often do mirror the presumptions of the rapists and facilitate their schemes. The direct human rights violations suffered by most children of war rape result from the actions and omissions of their birth communities, in which they suffer stigmatization and discrimination that frequently result in the denial of recognition, social benefits, and social support to war-rape children and their mothers. Such social ostracism can at times have fatal consequences, as it is linked to women's and children's socioeconomic prospects; instances exist of economically induced suicide and poverty-related morbidity related to such ostracism.¹⁶

This realization points to a significant quandary. While the birth community's attitudes and actions lead directly to the children's suffering, the communities are often weak and vulnerable, having themselves suffered deeply in the wider conflicts in which the rapes occurred. The quandary concerns the rights of such groups or communities to determine their own membership. Minority or oppressed groups, many theorists have argued, require special rights for their protection from the wider society (e.g., Kymlicka 1995), including the right to control membership (e.g., Walzer 1981, 1983). Political arrangements granting minority groups autonomy or a measure of self-determination are commonly utilized in seeking solutions to the kinds of intercommunity conflicts in which war rape frequently occurs. Surprisingly, relatively little attention has been given to questions surrounding individual membership in various groups (though cf. Mello 2004; Shachar 2001; Young 1990). Much more attention has been paid to the kinds of groups that can be the subjects of rights (e.g., Jones 1999; Kymlicka 1995; cf. Donnelly 2003: ch. 12; Green 1994). But, if groups, whatever they are, have the right to determine their own membership, wouldn't this right include the right to link membership to parentage? Would it not thus sanction the exclusion of war-rape children?

I cannot hope to address these questions adequately here, never mind to resolve them. I do want to distinguish two separate issues raised within this broader set of concerns, however, and briefly address the status of war-rape children in connection with each of them. The first issue concerns the right to a nationality, as set out in the UDHR (Article 15) and in various other UN human rights instruments, including the CRC, which articulates a child's right to acquire a nationality (Section I, Article 7, Para. 1). In a world still organized politically as a system of relatively autonomous and legally independent states exercising territorial jurisdiction, most human rights are still guaranteed—if they are guaranteed—by states. The right to a nationality is in such circumstances crucial to effective protection of most other rights. (To be a stateless person is in effect to be someone for whom no government has the responsibility to protect and to promote one's rights.) Children born of war rape should be guaranteed nationality in their mothers' state without prejudice, as specified by international law and convention. They should also be guaranteed nationality in the rapists' state (if different). While actual enjoyment of this right might prove difficult and unpleasant, it would provide legal standing for children that could facilitate claims for compensation and maintenance (see below).

The second, and thornier, question concerns membership in the mother's group, where that group is some community or distinct subset of the state's population. Should war-rape children—or other children who do not meet the group's criteria—nonetheless be entitled

to membership? What form would such an entitlement take? How would it be enforced? A well-known US Supreme Court decision denied that the child of a Pueblo Indian woman who married outside the tribe was entitled to membership, even though children of male tribe members were so entitled (*Santa Clara Pueblo v. Martinez*, 436 US 49 [1978]). The Court held that determining membership was a crucial “‘mechanism of social. . . self-definition’ and, as such, basic to the tribe’s cultural survival (Shachar 2001: 19). Whatever one might think about group membership standards that discriminate in such ways, questions about entitlements *are* central to group self-determination and survival. Whether a group should have such extensive rights to self-determination and survival lie beyond this essay’s scope, but they are clearly difficult and important questions, question about which the plight of the most vulnerable individuals might powerfully shape our thinking. Their complexity underscores the important role of nationality and its attendant public, institutional guarantees for human rights.

Returning to the question of whether wrongful procreation condones the logic of the rapist and excuses the actions of the child’s birth community, it seems safe to say at least that establishing that these children are themselves victims of human rights violations committed by their rapist-fathers could catalyze changes in the destructive discourses that often surround them. It would reinforce that the children have suffered wrongs, that they are victims of the same injustices experienced by others in their communities, and that their biological links to their rapist-fathers indicate no automatic sympathy or solidarity with them.

With respect to the broader concern that establishing war-rape children as victims of human rights violations might do more harm than good, it is worth considering what other options exist for doing them any good at all. The language of human rights is today the most resonant international normative discourse, one hard-wired into the policies and priorities of the UN and of many nongovernmental organizations (NGOs), donors, and aid agencies. Nothing could more powerfully stimulate a transformation in how children born of wartime rape are viewed than the clear recognition that they are victims of human rights violations both by their rapist-fathers and their states and communities. Such recognition would also facilitate prosecution of rapist-fathers, who presently enjoy immunity for the reproductive aspect of their actions. While reinforcing the stigma surrounding such children must be a concern, it is hard to imagine how one might address the rights violations they endure without reference to the circumstances of their conception, circumstances that unjustly but nonetheless dramatically affect their ability and likelihood of enjoying their rights. By invoking their human rights it might become possible to get the social and economic needs of children on to the international agenda.

Toward this end, criminalizing wrongful procreation would implicate the rapist-fathers as well as the militia, military, and political figures who promote rape and forced impregnation as tools of war and policy. Wrongful procreation is defined broadly enough to encompass those with command responsibility for such campaigns.¹⁷ It thus establishes the moral and legal links needed to press for restitution of various kinds in addressing the complex needs of war-rape children. These might include financial support, political benefits like guaranteed asylum or nationality, or other measures. Recognition of this crime might thus help to guide a much-needed reorientation of postconflict and transitional efforts in social reconstruction, reconciliation, and reintegration by ensuring that the special vulnerabilities of children born of war rape are recognized in conjunction with other social priorities, not merely as an afterthought or a residual category to be handled by international NGOs (DeLaet 2005; McEvoy-Levy 2005). Too often such policies exhibit what McEvoy-Levy (2005:

11) aptly terms “patriarchal pragmatism” that ignores the social, political, and economic needs and interests of “non-combatants” like war-rape children.

My main objectives in this essay were: to clear away the philosophical obstacles to recognizing that rapist-fathers violate the human rights of their children born of rape; to provide a clear, concise, and workable definition of wrongful procreation (and of the right to enjoy rights) for use in international law and humanitarian discourse; and, to show why such a definition is urgently needed and potentially effective. Much more could certainly be said on these important questions, but the foregoing is, I hope, enough to show that wrongful procreation could be an effective legal and political tool in bringing rapists and their political masters to justice in ways that might also facilitate constructive transformation of the lives and circumstances of war-rape children and their communities.

Wrongful procreation is a violation of a child’s human rights—specifically, of the right to enjoy rights enshrined in the UDHR. This right to enjoy rights should be explicitly recognized under the CRC and related human rights instruments. Moreover, wrongful procreation should be considered a crime against humanity and included within the jurisdiction of the ICC and other relevant international bodies when committed in the relevant contexts.¹⁸ History does not make us optimistic that war rape and forced impregnation will soon be eradicated; still, appropriate discursive and institutional change can at least make it possible that being a child of war rape will one day cease to be a predictor of a life marred by human rights violations. Recognizing wrongful procreation as a violation of a child’s right to enjoy rights can contribute to this important transformation.

Notes

1. These puzzles, though related, are distinct: the first concerns whether a procreative act can be considered a *wrong* against the person created, while the second has specifically to do with the *rights* of future persons.
2. Gaylor, Powell, Rozario, Smith, all reproduced in Grieg 2001; also Daniel 2005; Harris-Rimmer 2005.
3. In other cases states seek to exploit the children (and their mothers) for propaganda purposes, as was the case in East Pakistan/Bangladesh after the 1971 war; see D’Costa 2003.
4. In the final section I shall consider the responsibility of the child’s birth community in violating its rights as well as raise related questions about group rights.
5. As Carpenter shows, this is why the genocidal rape framework is inadequate for making sense of the children’s experience.
6. Specifically, Kavka (1981: 101ff.) argues, they misuse their reproductive powers in creating a child sure to have a restricted life, violating a modified form of the second formulation of Kant’s categorical imperative.
7. But see Schwartz 1978 for an earlier and essentially similar treatment.
8. I am not convinced that “life,” whatever that might mean, begins at conception, any more than I am convinced that it, or one’s possession of rights, begins at birth. I simply wish to avoid such questions here, as answering them is not necessary to developing the arguments I want to advance. Of course, answering them does bear on whether one considers abortion a morally appropriate option in the case of forced impregnation, but I shall leave that problem aside.
9. The contrast is suggested by Warren 1978, though I depart somewhat from her usage.
10. To be clear, they are *actual* future persons because the setting of the bomb has no impact or bearing on their coming into existence. This distinction, while perhaps perplexing, becomes important in addressing the nonidentity problem, to which I return below.
11. Discussions of the Risky Policy always begin with some unspecified “chance” of a future catastrophe but the analysis always entails that the catastrophe in fact happens. That we cannot know in the present whether the risk will turn into a reality has always seemed to me a relevant

factor in weighing the morality of the choice for the Risky Policy. There seems to be a clear and important difference between cases in which risks might or might not materialize in the more distant future and cases in which the harmful result of the action is direct and nearly certain.

12. Numerous critics vigorously reject this notion of rights-waiving, correctly asserting that it misses what rights are; see, e.g., Smolkin 1999: 201; Steinbock and McClamrock 1994: 6; cf. Baier 1984.
13. Perhaps something like the idea of double effect familiar to just war theorists could be invoked in thinking about such cases, though I am uncertain about this and cannot explore it further here; see Walzer 1977: 152–159.
14. An earlier draft of this essay discussed a right to *have* rights; I am grateful to an anonymous referee for raising the circularity objection in connection with that insufficiently precise formulation.
15. I am indebted to Patricia Weitsman for her critical remarks on this point.
16. I am grateful to Charli Carpenter for making this point clear to me.
17. It is also broad enough to cover such imaginable future wrongs as cloning children as sources for donor organs or cloning a class of sub- or part-human laborers.
18. Clearly wrongful procreation has a strong affinity with the other crimes against humanity defined in Article 7 of the Rome Statute, which defines them as acts “. . . committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack: murder; extermination; enslavement; deportation or forcible transfer of population; imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law; torture; rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity; persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender. . . ; enforced disappearance of persons; the crime of apartheid; other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.”

References

- ALLEN, Beverly. (1996) *Rape Warfare: The Hidden Genocide in Bosnia-Herzegovina and Croatia* (Minneapolis, MN: University of Minnesota Press).
- APIO, Eunice. (2005). Children born of LRA captivity in Uganda: Forgotten children of war? In *Born of War: Protecting Children of Sexual Violence Survivors in Conflict Zones*, R. C. Carpenter (ed.) (Bloomfield, CT: Kumarian), 2007.
- ARCHARD, David. (2004) Wrongful life. *Philosophy*, 79 (3), 403–420.
- BAIER, Annette. (1984) For the sake of future generations. In *Earthbound: Introductory Essays in Environmental Ethics*, T. Regan (ed.) (Philadelphia: Temple University Press).
- BALDI, Giulia. (2005) Sierra Leone war babies: International invisibility vs. program responses at country level. In *Born of War: Protecting Children of Sexual Violence Survivors in Conflict Zones*, R. C. Carpenter (ed.) (Bloomfield, CT: Kumarian), 2007.
- BROWNMILLER, Susan. (1979) *Against Our Will: Men, Women, and Rape* (New York: Bantam Books).
- CARPENTER, R. Charli. (2000a) Forced maternity, children’s rights and the Genocide Convention: A theoretical analysis. *Journal of Genocide Research*, 2(2), 213–244.
- CARPENTER, R. Charli. (2000b) Surfacing children: Limitations of genocidal rape discourse. *Human Rights Quarterly*, 22(2), 428–477.
- CARPENTER, R. Charli. (2005) Gender, ethnicity, and children’s human rights: Theorizing babies born of wartime rape and sexual exploitation. In *Born of War: Protecting Children of Sexual Violence Survivors in Conflict Zones*, R. C. Carpenter (ed.) (Bloomfield, CT: Kumarian), 2007.

- D' COSTA, Dorothy Bina. (2003) *The Gendered Construction of Nationalism: From Partition to Creation*. Doctoral Dissertation, Department of International Relations and Political Science, Australian National University, Canberra.
- DANIEL, Joana. (2005) The Convention on the Rights of the Child and Children Born of Genocidal Rape in Bosni-Herzegovina. In *Born of War: Protecting Children of Sexual Violence Survivors in Conflict Zones*, R. C. Carpenter (ed.) (Bloomfield, CT: Kumarian), 2007.
- DELAET, Debra L. (2005) Theorizing justice for war babies. In *Born of War: Protecting Children of Sexual Violence Survivors in Conflict Zones*, R. C. Carpenter (ed.) (Bloomfield, CT: Kumarian), 2007.
- DONNELLY, Jack. (2003) *Universal Human Rights in Theory and Practice*. 2nd ed. (Ithaca, NY: Cornell University Press).
- FEINBERG, Joel. (1986) Wrongful life and the counterfactual element in harming. *Social Philosophy and Policy*, 4(1), 145–178.
- FISHER, Siobhán K. (1996) Occupation of the womb: Forced impregnation as genocide. *Duke Law Journal*, 46(1), 91–133.
- GREEN, Leslie. (1994) Internal minorities and their rights. In *Group Rights*, J. Baker (ed.) (Toronto: University of Toronto Press).
- GRIEG, Kai. (2001) *The War Children of the World* (Bergen, Norway: War and Children Identity Project).
- HANSER, Matthew. (1990) Harming future people. *Philosophy and Public Affairs*, 19 (1), 47–70.
- HARMAN, Elizabeth. (2004) Can we harm and benefit in creating? *Philosophical Perspectives*, 18, 89–113.
- HARRIS-RIMMER, Susan. (2005) Children born of rape and their mothers in Timor Lorosa'e. In *Born of War: Protecting Children of Sexual Violence Survivors in Conflict Zones*, R. C. Carpenter (ed.) (Bloomfield, CT: Kumarian), 2007.
- JONES, Peter. (1999) Human rights, group rights, and people's rights. *Human Rights Quarterly*, 21 (1), 80–107.
- KAVKA, Gregory S. (1981) The paradox of future individuals. *Philosophy and Public Affairs*, 11(2), 93–112.
- KYMLICKA, Will. (1995) *Multicultural Citizenship: A Liberal Theory of Minority Rights* (Oxford: Clarendon Press).
- MCEVOY-LEVY, Siobhán. (2005) Children born of wartime rape and human rights culture. In *Born of War: Protecting Children of Sexual Violence Survivors in Conflict Zones*, R. C. Carpenter (ed.) (Bloomfield, CT: Kumarian), 2007.
- MELLO, Brian. (2004) Recasting the right to self-determination: Group rights and political participation. *Social Theory and Practice*, 30 (2), 193–213.
- NIARCHOS, Catherine. (1995) Women, war, and rape: Challenges facing the International Tribunal for the Former Yugoslavia. 1995, 17 (4), 649–690.
- PARFIT, Derek. (1984) *Reasons and Persons* (Oxford: Oxford University Press).
- Rome Statute of the International Criminal Court. (2005) "Prevent Genocide International." [Online]. Available; <http://www.preventgenocide.org/law/icc/statute/part-a.htm#2> [15 July 2005]
- SCHWARTZ, Thomas. (1978) Obligations to posterity. In *Obligations to Future Generations*, R. I. Sikora and B. Barry (eds.) (Philadelphia: Temple University Press).
- SHACHAR, Ayelet. (2001) *Multicultural Jurisdictions: Cultural Differences and Women's Rights* (Cambridge: Cambridge University Press).
- SHIFFRIN, Seana Valentine. (1999) Wrongful life, proactive responsibility, and the significance of harm. *Legal Theory*, 5 (2), 117–148.
- SHUE, Henry. (1996) *Basic Rights: Subsistence, Affluence, and U.S. Foreign Policy* (Princeton: Princeton University Press).
- SMOLKIN, Doran. (1999) Toward a rights-based solution to the non-identity problem. *Journal of Social Philosophy*, 30(1), 194–208.

- STEINBOCK, Bonnie, and MCCLAMROCK, Ron. (1994). When is birth unfair to the child? *Hastings Center Report*, 24 (6), 15–22.
- STIGALMEYER, Alexandra, ed. (1994) *Mass Rape: the War Against Women in Bosnia-Herzegovina* (Lincoln, NE: University of Nebraska Press).
- VEHMAS, Simo. (2002) Is it wrong to deliberately conceive or give birth to a child with mental retardation? *Journal of Medicine and Philosophy*, 27(1), 47–63.
- WALZER, Michael. (1977) *Just and Unjust Wars: A Moral Argument with Historical Illustrations* (New York: Basic Books).
- WALZER, Michael. (1981) The distribution of membership. In *Boundaries: National Autonomy and its Limits*, H. Shue and P. G. Brown (eds.) (Totowa, NJ: Rowman and Littlefield).
- WALZER, Michael. (1983) *Spheres of Justice: A Defense of Pluralism and Equality* (New York: Basic Books).
- WARREN, Mary. (1978) Do potential people have moral rights? In *Obligations to Future Generations*, R. I. Sikora and B. Barry (eds.) (Philadelphia: Temple University Press).
- WEITSMAN, Patricia. (2005) War babies and the politics of identity. In *Born of War: Protecting Children of Sexual Violence Survivors in Conflict Zones*, R. C. Carpenter (ed.) (Bloomfield, CT: Kumarian), 2007.
- WING, Adrien Katherine, and MERCHÁN, Sylke. (1993) Rape, ethnicity, and culture: Spirit injury from Bosnia to Black America. *Columbia Human Rights Law Review*, 25(1), 1–48.
- WOODWARD, James. (1986) The non-identity problem. *Ethics*, 96(4), 804–831.
- YOUNG, Iris Marion. (1990) *Justice and the Politics of Difference* (Princeton: Princeton University Press).