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Introduction

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Symposium

Creating Children with Disabilities: Commentaries on Parental Tort Liability for Preimplantation Genetic Interventions

Introduction

Montaigne wrote that “there is no conversation more boring than the one where everybody agrees.” The articles that follow are no such conversation. Last Spring, the *Journal* office was full of people, and the editors were having a conversation that slowly grew louder and involved more people, about an article written by Professor Kirsten Rabe Smolensky. As the article passed from one set of hands to another, the debate began and the discourse elevated. As the executive-level editors finished their own conversation, or rather as we paused to watch the energy which had taken over the *Journal* office, we knew that this article was only the beginning of a very important conversation; and we wanted to be a part of bringing this energized dialogue to you. It was from that afternoon, when no one agreed, that this most exciting idea began.

At the core of this Issue’s Symposium is the article *Creating Children with Disabilities: Parental Tort Liability for Preimplantation Genetic Interventions* by Professor Kirsten Rabe Smolensky, from the University of Arizona James E. Rogers College of Law. Her piece sparked our conversations by exploring what she believes to be the very real possibility of imposing tort liability on parents who inflict harm on their own children via direct intervention on pre-embryos as a method of preimplantation genetic modification. Against a background of the science behind these interventions, she explores both intentional tort and negligence claims against parents. In doing so, she defines the harms that could constitute injury and addresses some more practical issues that arise from the enforcement of such liability.

We then expanded the conversation to include some dissenting voices in order to enliven the debate. First, Professor I. Glenn Cohen of Harvard Law School joined the conversation. He responds in his article,

Intentional Diminishment, the Non-Identity Problem, and Legal Liability, by first exposing flaws in attempts to differentiate between manipulation and selection interventions. He then proceeds to detail the lack of feasible standards for imposing liability, even if legal scholars were to ignore the Non-Identity Problem.

Professor Jamie King of the University of California, Hastings College of the Law responded with her essay, *Duty to the Unborn: A Response to Smolensky*. Professor King details the state of the art as it now stands, and argues that the technology has yet to demand this kind of legal sanction. In addition, she explores the other ways parents might become liable to future children due to preimplantation decision making, and argues that this proffered course of action does not address any of those possible interventions and their resulting harms.

Our last scholar, Professor Alicia R. Ouellette from Albany Law School, rounded out our conversation with her piece *Insult to Injury: A Disability-Sensitive Response to Smolensky's Call for Parental Tort Liability for Preimplantation Genetic Interventions*. Professor Ouellette deals with the very definition of harm relied upon by Professor Smolensky. Rather than defining harm as the creation of a disability, she advocates, instead, to use a disability-sensitive method for assessing harm, balancing the harms caused by the interventions with the benefits gained.

Professor Smolensky does get the final word in this conversation with a reply to her colleagues in which she makes her case one last time. In closing, she remarks that she is interested to see how the literature develops in this area and looks forward to reading more on this topic soon. Her closing point is a part of the conversation on which we all can finally agree.