

Artificial Insemination and Happiness

YAPAY DÖLLENME VE MUTLULUK

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Summary

Based on a case happened in 2001 in China, the author wants to show the ethical and legal issues of a woman's wish, which should be her basic right to have a child by assisted reproduction technology, and to analysis if there is some relationship between bioethics and happiness, and to find if there is some reason that bioethics should provide help for those whoever need it.

The case is about a woman whose husband was sentenced to death, she applied to court to allow her to have a child for her husband by artificial insemination of her husband. The conclusion of paper is that there is no direct relationship between bioethics and happiness, virtue and vice of bioethics not only depends on its moral background, but also legal system, social psychology and other social circumstances.

Key Words: Artificial insemination, Bioethics, Happiness

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Özet

Çin'de 2001de meydana gelen bir olaya dayanarak yazar, kadının yardımıyla üreme teknolojisi ile çocuk sahibi olabilme temel hakkının bulunması isteğinin etik ve legal sorunlarını göstermek, eğer biyoetik ve mutluluk arasında bir ilişki varsa bunu analiz etmek ve eğer her kimin buna ihtiyacı olursa biyoetiğin yardımıyla bulunabilme nedenini bulmak istemektedir.

Olgu, eşi ölüme mahkum edilmiş bir kadının yapay dölleme ile eşinden çocuk sahibi olmasına izin verilmesi için mahkemeye başvurması hakkındadır. Makalenin sonucu, biyoetik ve mutluluk arasında direkt bir ilişki olmadığı, biyoetiğin etki ve yardımının sadece ahlaki geçmişine değil, aynı zamanda yasal sistem, sosyal psikoloji ve diğer sosyal olaylara bağlı olduğudur.

Anahtar Kelimeler: Yapay dölleme, Biyoetik, Mutluluk

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In May 2001, Lady Zheng's husband was put into prison for murder. In August 2001, her husband was pronounced death penalty. Lady Zheng wanted to have a child for her husband and let the child to live with her parents-in-law, so she applied to Zhoushan Middle Court, but be rejected. Then she applied to High Court of Zhejiang Province. Many people paid attention to the case, but unfortunately, the court took a passive tone, didn't answer directly (1) and Lady Zheng's wish came to nothing with the execution of her husband in January, 2002 (2).

Before the execution, whether Zheng's wish should be met once a hot discussion around China.

The common idea of the society

It is no doubt that many people who concerned

the case support Lady Zheng, even though there is no detail data of big questionnaire. Here there is a small questionnaire to some medical students. A class, among the 20 students, 3 against Lady Zheng's request, include one held sympathy in morality; 17 students support Lady Zheng. Another 47 students class, 26 for and 21 against.

The main reason for support is that it is Lady Zheng and her husband's right. The main reason against is from the viewpoint of child's growth, which they think it is not good to the child. And there is another reason, misunderstanding maybe: now that her husband's right of life is deprived, let alone other rights.

One phenomenon should be mentioned: with the raising of grade, the number of against also raises.

The emerging of the issue related with the development of biomedical technology

The issue “whether the death penalty criminal” has a right to have a child is related with the development of biomedical technology. Before, people couldn’t raise such question or had such request because there is no possibility for death penalty criminal to have a child due to the punishment of depriving of freedom, and many rights, such as having a child, are mainly based on the freedom. But now, artificial insemination provides the possibility to have a child without violating the jail regulation, even if the criminal does not have freedom.

Now the issue is: now that we have the technology, should we use it? Just like the dream we want to fly before, but now we have plane, and can use it to make our dream come true; but we also discuss human cloning, which we shouldn’t do even if we have the technology and can do it. So this is the similar situation.

The current legal views of China

Issue 1: whether the death penalty criminal has the right to have a child?

Some people said it is a blank field, because there is no direct and clear declaration in current law. But more people opposed, and they said: only if there is no clause in current law to show objection, that means it is allowed. In current Criminal Law of China, there is no clause to mention the right to have a child is deprived, so it means Lady Zheng’s husband has the right. But people can easily raise a question that if the criminal is a woman, such request will violate the other law (e.g. if the woman is pregnant, she will not be executed death. But she would be death penalty if not pregnant), so this raise another question, and not the same issue.

The problem is that the request of artificial insemination was put by Lady Zheng, and there is no

doubt Lady Zheng’s request is reasonable, and moreover the behavior of taking the sperm of her husband will not violate the current regulation for the jail management.

Issue 2. now that the criminal has such right, can this right be realized?

This means the right and its realization are not the same thing, moreover, respect the right and support the right to be realized are also different. The latter relates to the individual’s happiness to much extent.

In the discussion, some experts said the realization of such right is difficult, because the doctor is not allowed to go into the jail, let alone to take the sperm; another, the judge will not support Lady Zheng’s request so easily because the worrying about the possible effects to society that more family members raise such request and it will produce bad effect to the children. In fact, it is true in the field of law, many judges will take a passive way to avoid any answer and let such request “die” naturally.

But many people argue that the judge should support Lady Zheng’s request and which will show society the progress of law in China, and they mentioned that not so many wives would like to have a child for her criminal husband like Lady Zheng, so the worrying is not necessary.

So, the situation is subtle: if the judge does not support Lady Zheng’s request, it does not mean illegal; but if the judge does support Lady Zheng’s request, it is perfect and it is also legal.

The real psychology - the reflection of two different tradition

Psychology 1: to have a child and continue the generation for the big family is a strong tradition.

We have a words in China: among the three unfilial piety, have no child is the worst. The original aim of Lady Zheng’s request was just such

idea, she hoped the child could take comfort to grandparents.

Psychology 2: relationship, not the individual's right, is the most important in current China.

The child holds very important statue in family and society. For example, if something is good to parents but not good to child, the common values in China is to for the interest of child and give up parents' interest. The most important reason for those people who don't agree to support Lady Zheng's request, not because she and her husband don't have right, but because this is not good to child's growth. E.g. this child will be brought up in a single-parent-family, the child maybe to bear the discrimination from others, and there is financial difficulty for family, all these will produce bad affect to the child's psychology. Till now, China has not developed a common value to think for the unclear interest of potential child or fetus, and will easily justify his behavior of supporting the interest of person who already exists here, but not concern much the interest of a person who has not exist.

Of course some people argued that this is not an absolute factor, which will be avoided by better education and shouldn't be regarded as a factor for legal judgment. On the contrary, the right of parents is clear, and should be supported.

Even the two traditions co-exist now, which one can win depends on the values of the field of law and the judges.

Biomedical technology and happiness

Happiness is pursued by everyone, it is not only a subjective feeling, but connected closely with culture and its values in special region. In China, the whole and harmonious family, the health and progress of child, individual development, etc. are all necessary factors in the formulation of happiness.

Whose happiness is also a question. Some people think their own rights are realized is happy,

some people think if they give up their rights and can obtain other people (including children, parents, other family members, and so on)'s interest in return, that is happiness.

Due to the fact of not development of legal system, the judges are facing and will face many problems which will not be clear in current laws or regulations. Under such circumstances, the moral sense and level of judges will play an important role is decision making, which will relate to the client's happiness. In China, many court cases show a special phenomenon, that is the color of "personal rule" behind the rule by law. It also shows a connection between law and politics, and the idea of some important governors will produce fundamental effect to the outcome of judge. The situation of not developed legal system, the psychology to avoid potential problems and relatively lower professional morality level, all these can explain the result of the balance of two tradition and the fate of this case.

In fact, many people know this result at advanced, that is Lady Zheng's request comes to nothing. To many people, they can just understand the result, but they also think that it is not perfect, because it is not active to protect the reasonable right of clients, and the most important is that such protection does not harm social interest at all and does not violate the current regulation.

The conclusion of paper is that there is no direct relationship between biomedical technology and happiness, virtue and vice of bioethics not only depends on its moral background, but also legal system, social psychology and other social circumstances. Usually, people have to not only think whether we should support the client's request, but also should balance the possible outcomes of providing support.

P.s. Some kind people once gave a suggestion: to ask Lady Zheng's husband to donate sperm to sperm bank and she can use his husband's sperm to have a child by the way of AID.

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