

# Reviewing and Reflecting on Reproductive Rights in the Context of the Value of Law

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## Abstract

Procreation should not be a social responsibility for human beings, but a need that arises from the heart of the subject, not to meet the expectations of others, but the infinite desire for new life, not to be urged by others, but a choice that one makes under serious consideration. When procreation becomes an oppression of power, it becomes the “great” excuse to destroy all the rights of the subject, and all exploitation and oppression is moralised and rationalised. It is intended to explore the legal values and spirit behind reproductive rights from the perspective of individual freedom versus collective confinement, human key versus instrumental fence, evolutionary rationality versus constructive rationality.

**Keywords:** reproductive rights, freedom, legal boundaries, constructive rationality

## 1. The World of Self-Government: Individual Freedom and Collective Confinement

The dispute over reproductive rights is essentially an imbalance in the power structure of the subject and a misalignment of the subject's behaviour. The distortion of individual power by group power. Finding a suitable boundary between the individual, society and government is akin to the choice between Scylla and Charybdis. Mill said “the nature and limits of the power that society can legitimately exert over the individual”<sup>1</sup>. Amartya Sen's “Pareto theorem of the impossibility of freedom” explains the paradox in another way. The direct substitution of group power for individual rights has led to a blurring of the boundaries between the private and the public spheres, which has led to the frequent occurrence of simple and brutal treatment of individuals, the abduction of some people's perceptions by group perceptions, and the deprivation of individual rights, resulting in the obscuring of the private sphere of the individual. The core of the solution to the Gordian Knot is therefore to clarify the boundaries of power between the group and the individual and to determine the boundaries of the law.

Bozankert proposed a “theory of limited state intervention”, in which the state intervenes in society to a certain extent. Coase took the size of the enterprise as a base and deduced from economics that the borderline between individual freedom and law is the point where the marginal social gain is equal to the marginal physical gain. The power of society cannot spread indefinitely and interfere with the private sphere of the individual. The power of society should be based on rules of legitimate origin, defining the boundaries of the law, fully respecting and consciously guaranteeing the rights of each individual in society. Respecting and safeguarding the freedom of the individual cannot remain superficial; it is not a merry-go-round in an eight-tone box that appears to be lively and noisy, but in fact stops at the point of origin. It is the direction in which the government and society should work together to improve the system of self-care within the overall framework of the group, and to further regulate the boundaries of the rights of the group and the self. The Western proverb “God's to God, Caesar's to Caesar” may inspire us, as did William Pitt Sr. in “On the Right of the Englishman to the Safety of His Own Home”: “Even the poorest man can stand up to the authority of the king in his hut. The house may be

shabby, the roof may be rickety; the wind may blow into this house, the rain may shower into this house, but the king cannot set foot in it, nor will his thousand horses dare to cross the threshold of this shabby house.”

What the state or government should do is not to regulate childbearing, but to create a social environment suitable for those who wish to have children. The state or government cannot, in the name of instrumental rationality, banish individual beliefs and desires, arbitrarily restrict the private sphere or deprive individuals of their rights, nor does Herbart’s argument that public power should not be coerced under the pretext of “I’m doing this for your own good” justify its encroachment on private rights. As McCormick says in *The Legal System*, “freedom is ascribed to life and to the deep-rooted tendencies and values it enhances”, freedom is the opportunity for something to grow that has not been consciously designed to evolve a social system that guarantees the good functioning of a free society. This is in line with Hayek’s statement that “individual freedom does not lead to social disorder, but on the contrary to the construction of an order that best meets the evolutionary requirements of society and is the most fruitful principle for the progress of civilisation”, i.e., there is a positive correlation between the guarantee of individual freedom and the progress of civilisation, while society spontaneously nurtures. In other words, there is a positive correlation between the guarantee of individual freedom and the progress of civilisation, while society spontaneously nurtures an order that benefits the collective.

The task of reform is to draw a clear line between invisible antagonism and explicit dependence<sup>2</sup>, which is still essentially based on the individual existence and freedom of the human being. It is important not to see only grand narratives and abstract symbols, only nebulous concepts, but to ignore the destiny of the individual. Raz’s ‘second-order reasoning’ tells us that individual life touches the soul in its natural nature. Man is in the group and man is alienated by the group. We should seek a reconciliation between the “self” and the “group” in eternal time and space.

## 2. Coming Back: Human Keys and Tool Barriers

I am what I am, man is what he is, man is created by himself and determined by himself. Socrates’ “The thinking man is the measure of all things”, and Shakespeare’s “Man is the essence of the universe, the spirit of all things” blazed through the darkness of the medieval canopy, like lightning in the night, as life awakened and humanity was explored. In *Thus Spoke Zarathustra*, Nietzsche writes of ‘man’s existence as a self-willed being — thus a self-assertive decision or “to live or to die”, Fichte’s The “ego” is a rational entity, an essence, which governs everything and derives everything. The right to reproduction belongs to the category of the right to self-determination, which is the expression of the free will, bodily agency and free action of the human being, which are the inalienable rights that answer Descartes’ “What am I?” and “Man as man?” Moreover, the human being as a subject must not forget his or her identity as an individual and be hypnotised into a torrent of grand justice, otherwise he or she will become a slave to unconscious impulses and an abstract human being, dissolved by these symbols, losing himself or herself without realising it.

Man cannot rest on a “bridge of mere means”, he is an end, not a mere means, and at all times it is a value that the law should strongly advocate in order to avoid the objectification of human values and to respect the subjectivity of man. The most serious problem brought about by instrumental reason is the overemphasis on the means and the forgetting of the original end, under which everything can be calculated. Man is not a cold symbol, let alone a tool built up from data. From West to East, the *Analects* also have something in common, based on the pursuit of value or the measurement of legal gain: when the stables burned, the son withdrew from the court and said, “What is the harm to the people?” without asking about the horse. The focus of Confucius’ attention is still on the human being. The ‘depersonalisation’ of man would only have resulted in the alienation of man into an animal or a mere object to be enslaved and disciplined, as in the case of the 1935 Finnish sterilisation law for people with severe mental illness. The sterilisation law of 1935 imposed sterilisation on people with severe mental illnesses, and the regulation of reproduction under the theory of the population explosion is very similar to it. The word ‘humanity’ is not just a rhetorical term for something other than ‘human’. To abandon the value and dignity of the human person is to seek a fish out of a log.

The human being, as a human being, should be the ultimate end in itself. Kant says that “man is the ultimate end, not a means to any great end, and no end can exist above man himself as the ultimate end.” <sup>3</sup>Sandel coincides with this: “To respect the dignity of man means to treat man as an end in itself.” The purpose of human existence is to be human in itself, not to be used as a vehicle for the procreation of a particular end, let alone a means of perpetuating a so-called bloodline. Margaret Sanger suggests that “the purpose of fertility regulation is not to control population, but to guarantee women’s right to decide freely about their own bodies, to decide whether or not to become pregnant based on their own wishes and circumstances.” The right to reproduction is a fundamental human right, and individuals have the right to exercise it freely and responsibly. A sober modern civilisation must “allow people to live as human beings”. The construction of order and the regulation of law is also aimed at serving people and making them live better.

Russell said “I long for any nation, race or doctrine to be subordinated to the freedom, worth and dignity of every living individual.” The use of the human being as a tool to achieve a “great purpose” opens the door to disaster when the human being becomes a tool. If the individual can be sacrificed, swept away by the flood of so-called goals, thrown into the furnace of so-called goals and burned to nothing. Even if the goal is as big as the survival of the race, the continuation of civilisation or the extinction of culture, this is no reason to accept the justification of the existence of evil that wantonly deprives others of their fundamental rights, or even to witness it happening and walk with it. If man as a subject dies on the way to the ‘starry sea’, then the very meaning of the starry sea is questionable.

### **3. The Kingdom of Heaven on Earth: Evolutionary and Constructive Rationality**

Socrates said “Know yourselves, and thus acknowledge that you know very little”, to Araud’s “limited reason”, Simon’s “reason has limits”, Mandeville’s “limits of human reason”, “it is imprudent to reason from something other than facts”, and Popper’s strong critique of the philosophy of “designing the blueprint of the future by reason” based on the “omnipotence of reason”.

In order to swim across the sea of blood to the other side, the constructors “first realize the sea of blood”. Constructive rationalism is essentially the ‘blasphemy of reason’, which assumes that human reason is ‘omniscient’, mature and perfected enough to grasp and apply absolute knowledge, with effective and stable control. It highlights the disregard and sacrifice of otherwise invisible human values through the artificial planning and design of every aspect of society’s institutions. The construction of order on the basis of cost-benefit considerations breeds the ‘arrogance of reason’, and the proliferation and diffusion of constructive reason ravages individual values. The vain and delusional attempts at rationalism that seek to change the destiny of the group and cover society are often flawed, and recourse to a holistic construction of rationality only pushes people down the road to slavery. Such “good intentions” from the construct of reason constitute the greatest threat to the freedom of ordinary people, where it is absolutely impossible to create a paradise on earth, but it is not uncommon to turn it into a hell. Doesn’t man have the right to determine the course of his own life, and does he have to live in a rationally constructed way to be “right”?

In *The Brothers Karamazov*, Dostoevsky wrote: “Is it acceptable that the cornerstone of the edifice of man’s earthly happiness should originate in the sufferings and tears of a child? The child is not connected with the original sin of mankind, and the world to which Christ promised to give his life and the historical reason behind it cannot, in any case, surpass the real happiness and feelings of man.” Institutions and actions must be tested not only by the aims and motives of their designers and operators, but by the way they actually work and their effects. For there is nothing easier to do in this world than to give a veneer of noble motives to all actions, and the difficulty is that the means by which these ends are achieved and their consequences must be equally just and rational. The fantasy of a rationally constructed society, starting with Sparta, through Plato’s ideal state and up to More’s utopia, has been poured out with too much enthusiasm. The French Revolution, which sought to construct rationality, gave birth to the Jacobin dictatorship of terror and two generations of Bonaparte’s empire; Nazi Germany, which adopted the Nuremberg Laws and ethnic cleansing programmes under the slogans of “national honour” and “national origin”; and Lysenko’s “The former Soviet Union, represented by Lysenko, created forced migrations, artificial famines, and blind “projects to transform nature”.

From Dostoevsky to Hannah Arendt, love for the concrete is the only kind of love that should be known and believed. The construction of order is not an “is” regulation, but an evolutionary construction based on “why”. Both constructive and evolutionary rationality have to return to the soil in which they are embedded, and this is the way to keep the order alive and well. At the same time, thinking about reality is ultimately about paying attention to and caring for concrete people, concrete contradictions and concrete dilemmas, rather than replacing the observation of the living world and living life with grand theoretical concepts. At this point in the essay, we would like to conclude by repeating Hume’s words: “Use the weapons of the Enlightenment to resist the Enlightenment, and reduce the demands on reason through rational analysis”.

### **4. Conclusion**

The most fundamental value implicit in the law is freedom, the right to act or not to act according to one’s will within the limits allowed by law. The right to reproduction is an inherent right of every human being as a “spiritual animal”, and the right to decide on reproduction is at the heart of this right, that is, the right not to be arbitrarily interfered with or pressurised by external coercion, but the right to decide on one’s own will whether or not to have children, when to have children, the number of children to have, and the choice of the method of reproduction. Everyone can choose the way they want to live, and there is more to life than just having children. Respect for and protection of the value of the human being as a subject should be the highest priority in the formulation of a national policy or a structure of order.

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