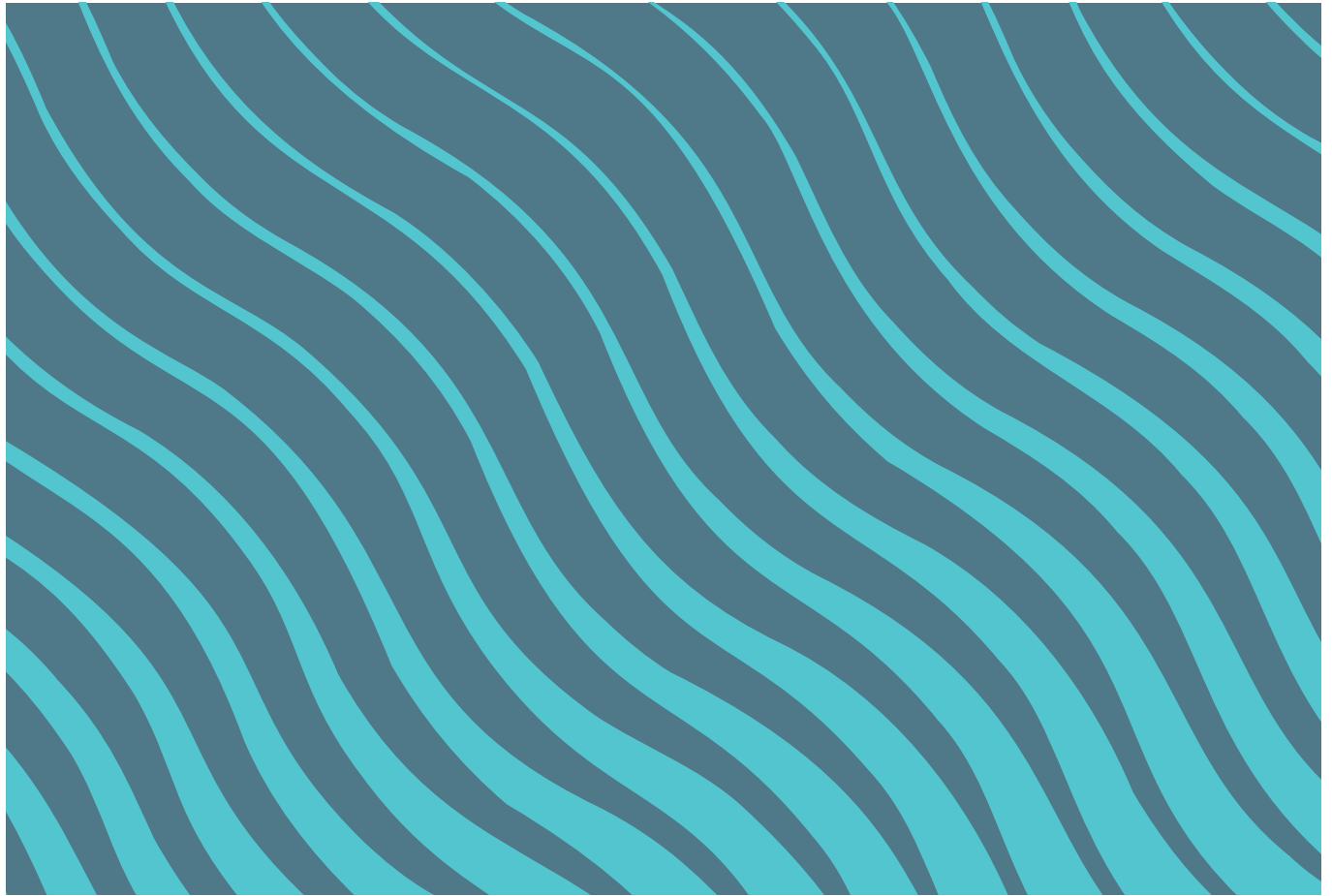




Protestant Church
in Switzerland



Ethical studies of the Protestant Church in Switzerland

Marriage, Parenthood, Children

What are the ramifications
of same-sex marriage?

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Preface

The order of marriage and family life was an important concern of the Reformation. From the Protestant Reformed point of view, marriage, parenthood and family form realms and probationary fields of Christian freedom. Church ceremonies and rituals accompany the entire family life. This is a prominent expression of the church's attention to marriage and family issues.

Social developments do not stop at the church doors. Therefore, the ecclesiastical-theological reflection is in need of change and supplementation. Christian ethical orientation does not want to stop the course of the world, but to accompany it constructively and critically with a view to the good life. Reformation belongs to everyday life and challenges churches and theologians to go over their own books again and again: again and again to give an account of their own faith hope (1Pet 3,15) and again and again to examine an ever-changing social present and to keep what is good. (1Thess 5,21).

In 2022, the Swiss voting people approved the introduction of marriage for same-sex couples. Already in 2019, the Synod of the Protestant Reformed Church had recommended to member churches, in case of approval for liturgically following the new marriage regulation. The revision of the matrimonial law now raises the question of the consequences for marriage, parents, children and families. In the past, the Protestant Church in Switzerland (PCS) has expressed itself on various occasions on bioethical questions of reproductive medicine. At the center of Non-invasive Prenatal Testing (NIPT), In-vitro-fertilization (IVF), and Preimplantation Genetic Diagnosis (PGD) were ethical-theological considerations about the protection of life and embryos. Because same-sex married couples – apart from child

adoption – cannot become parents without reproductive medical support, new questions arise: To whom should which reproductive medical measures be made available to found their own family?

The Council of the PCS takes this challenge as an occasion for a basic theological-ethical reflection. Theological ethics has long been intensively involved in the bioethical discourses. But a broad inner-church conversation has not yet taken place. In view of the upcoming bio- and family-ethical questions of great socio-political scope, the Council of the PCS presents a theological-ethical study. It develops and explains theological-ethical foundations for an “appropriate” and “humane” (Arthur Rich) church dialogue on reproductive medicine in the context of marriage, parenthood and family. The study is complemented by the thesis-like short version *10 Questions – 10 Answers. Marriage, Parenthood, Children from a Protestant Reformed Perspective*, Bern, June 2022. This study and the abstract do not offer a conclusive position, but rather Protestant Reformed contributions to the reasoned formation of judgment in an important discussion that affects all of society.

With a large majority, the Synod of the PCS supported the opening of marriage to same-sex couples. However, the issues of reproductive medicine that have been raised are fundamentally relevant to all couples who want to start a family. For the Council of PCS, a bio-medically informed and theologically ethical discussion is indispensable. May this study enrich the conversation.

Rev. Rita Famos
President

"I was perhaps wise to have found you; yet I did not find, GOD gave you to me. No other hand blesses so."¹

"The church is not where people affirm their common ethos and image, but where God rules hearts through his Word – however uniform or diverse the manifestations of this may be – and where no other dominion is thus permitted: this is practiced freedom from dominion, from which ethics takes its starting point, remaining critical of morality as morality remains within the limited discourse on governance and freedom."²

1 The discussion of marriage and family as a challenge to the church

1.1 Introduction

From a Reformed perspective, marriage, parenthood, and family are substantive areas and testing fields for Christian freedom. The central question of how Christ frees people to live in communion with God is as relevant to the church in general as it is with regard to marriage, parenthood, and the family in particular. Theology and theological ethics reflect upon the relationships and structures that people actively realize and take responsibility for, without this fully encompassing the scope of Christian relationships.

The current theological and church-internal discussions on marriage, parenthood, and family presuppose a societal world that was neither accepted nor rejected by the texts of the Bible. Churches today are challenged to provide answers to questions that the protagonists of the Bible would not even have dreamt of asking. At the same time, the biblical message forms the constitutive horizon within which Christian life must be explored and developed in the here and now. While the roles of spouses, fathers, mothers, and children have been changing alongside society and the dynamics of technological development, they remain in the hands of their Creator and Redeemer at every moment of their lives, and not entirely left to their own devices nor to the responsibility of their fellow human beings.

Marriage and family serve as a social model³ that was systematically promoted by the churches and which provided a point of connection for their societal role with regard to moral integration.⁴ Views of marriage and family represent, convey, and justify moral norms, social attitudes, and the self-understanding of society. In addition to charitable works, marriage and family were long considered prominent areas of realization for a Christian-moral way of life. The guiding models of mar-

riage and family do not depict marital and family realities, but are in fact normative in two different ways: As a critical regulative, the models address the differences between the claims and reality of marriage and family (gender hierarchies, family-internal power relationships, etc.), while also supporting traditional images of marriage and family in the face of processes of diffusion and change affecting the realities of marriage and family. The models thus react to social practices connecting with socially established biological and reproductive technologies. The pluralization of lifestyles that began in the 1970s not only led to a pluralization of traditional patterns, role models, and marital and family morals. Liturgical acts (baptism, worship, confirmation, marriage, funerals) carry forward traditional church concepts of marriage and family through all phases of life. Although new liturgical forms that reflect current realities in relationships and family (e.g. in the form of church separation and farewell rituals in the event of divorce or the loss of a person not yet born) have long been practiced, they have still yet to be taken into account in official church ordinances.

Issues concerning parenthood and family are currently of particular relevance to the context of biotechnological and reproductive medicine. The introduction of same-sex marriage has led to a broadening of the bioethical focus. This is not just a matter of what should or should not be done in terms of biotechnology and reproduction, but also of who should have access to medically assisted reproduction. This includes the question of reproductive medical support for same-sex parents and thus the constellations of sexes among couples who seek to become parents. The reproductive processes necessary for same-sex parenthood are a matter for general discussion here. While same-sex parenthood is dependent either on sperm, egg cell, and embryo donations or on surrogate mothers, these methods have so far been employed mostly for opposite-sex couples.

The legal extension of marriage to same-sex couples serves as an occasion for reflection on the ecclesiastical-theological foundations and approaches to bioethical questions of reproductive medicine. This study therefore focuses on the question of same-sex parenthood. Reproductive medical procedures are, however, aimed at couples regardless of the constellation of their sexes. The medical methods discussed were indeed not only developed for opposite-sex couples, even if they are mainly used for them today. This is therefore not a matter of a special reproductive medicine for same-sex couples. Their specific situation is merely one current area of application for a topic that can affect all couples who

seek to have children in what is principally the same manner. The bioethical questions concerning the conditions, possibilities, and limitations of a reproductive process will arise regardless of who puts them to use. From a justice-oriented ethical perspective, we must ask whether there should not be equal access to reproductive medicine and whether unequal access can be justified. The first set of topics here delves into anthropological, biological, and medical questions, the second set focuses on political and sociological aspects.

The connection between nature (natural law), creation, and institutions (human/societal orders) found in church and theological traditions renders it more difficult to approach the topics of reproductive medicine and same-sex partnership and parenthood. Maintaining a “nature”-based or “naturalness” principle connected to the theology of creation and its order presents an elevated and often insurmountable hurdle. To make matters worse, one methodological challenge is often overlooked: the dramaturgy of fate demands theological explanations. What is expected and what is forbidden also requires theological-ethical justifications. Answers to the question of why something is the way it is, when it could also be different (when other situations are brought about by fate), are not (any longer) sufficient when the question arises as to why something should be the way it is and not otherwise. Explanations relate to what emerges from the perspective of the observer, while justifications relate to what can be done and can be left undone from the perspective of the participants.

Theological explanations that ignore or reject possibilities for their not having (yet) been possible in the past do not suffice to address questions posed today. It was never a viable theological option to say “that which must not, cannot be”. The historical dynamics of human possibility have challenged, time and again, the world of tradition and images of self and humankind, as they would otherwise only be nostalgic fantasies. This does not mean that they are to be abolished or adapted uncritically, but that they must be rendered plausible enough so that they can provide orientation for lives here and today. This study thus begins with a foundation of marriage and family from a Reformed perspective, founded in the theology of blessing and covenant. The dynamic-relational understanding emerging here will open up room for ecclesiastical-theological discourse on the subsequent reproductive and bioethical issues.

In view of the controversies within and among churches, the Communion of Protestant Churches in Europe (CPCE) proposed a “corridor”-style approach within the

church in its 2017 publication “Before I formed you in the womb...”. This involves mapping out a “‘corridor’ of authentically Protestant positions, within whose boundaries discussion, debate and moral discernment can take place.”⁵ On the subject of parent-child relationships, the CPCE document states: “The relation between communicative freedom, love and participatory justice is important for bioethical problems in general and specially for the ethical issues of modern reproductive medicine. Not only the desire to have children but also the child’s welfare has to be discussed in general and also in every single case from the fourfold perspective of love, communicative freedom, responsibility and participatory justice.”⁶ This study follows on this point to pursue two goals: 1. The *presentation* of the discussion on marriage, reproductive medicine, and child welfare in the churches and in law; and 2. the *exploration* of biblical-theological contexts, which can be followed up by theological-ethical discussions within the churches.

This study is deliberately limited to basic questions. Certain central concerns are excluded here, in particular: 1. the bioethical reflection on the practice of reproductive medicine. Detailed bioethical questions (how should sperm, egg cell, embryo donations and surrogate motherhood be assessed from a church-theological point of view?), which would require a separate subsequent discussion; 2. discussion of important ethical and economic matters (socio-economic, gender and status-related inequalities, fair distribution of opportunities and resources); 3. the expansion of the discourse perspective, in line with social reality, to include concerns of the LGBTQ communities. Towards the development of biblical-theological foundations for the church discourse on medically assisted reproduction, this text proceeds both deconstructively (creation, nature, child welfare) and constructively (theology of covenant and blessing, orientation towards narrative and relationship). The unequal treatment of opposite-sex and same-sex couples with regard to accessing reproductive medicine was justified in the Swiss Reproductive Medicine Act with reference to child welfare. A separate chapter is therefore devoted to the deconstruction and reconstruction of that concept. The exploratory perspective of this study is based on the theology of covenant and blessing and aims at a relational-ethical narrative for an understanding of parenthood, childhood, and family.

With a view to parenthood and the family, a church-theological view introduces the perspective of the Gospel as a context of exploration. The appeal of theological ethics within the sphere of the church lies here in its ability to present the reality of the church of Jesus

Christ as a model for the reality of parenthood and family. The study adopts an open, exploratory perspective without striving for neutrality and thus predetermining particular positions. It does not offer “solutions”, but defines the field of discourse and offers suggestions regarding the direction in which theological and ethical thinking can be further pursued.

1.2 Societal developments

Civil marriage refers to the union between “spouses” (Art. 94, 159 Swiss Civil Code, SCC) that is contractually concluded and guaranteed by the state (Art. 14 Federal Constitution). They “mutually undertake to strive to safeguard the interests of the marital union and to care jointly for the children. They owe each other loyalty and support.” (Art. 159 Para. 2-3, SCC) The marital partnership, which is designed for continuity and durability, is privileged in comparison with other communal forms of life and is legitimized and protected in a singular manner through civil marriage. The current legal situation was preceded by a long and varied history of marriage regulations.⁷ During the Reformation, the Reformed parts of Switzerland established marital freedom alongside the obligation to marry in church, civil marriage registers, and marriage courts. Until the introduction of compulsory civil marriages within the framework of the Federal Constitution of 1874/1875, matters involving marriage law fell within the responsibility of the regional churches. Only the cantons of Geneva (1821), Neuchâtel (1853), Ticino (1855), and Basel-Stadt (1871) had previously introduced civil marriages. Since this legal institutionalization of civil marriage, marriage under civil law has been a mandatory prerequisite for church marriage (prohibition of prior marriage, Art. 97 Para. 3 SCC).

The current discussion of marriage and family has its roots in the discourse on emancipation, sexuality, and gender that began in the 1960s. Marriage and the family were initially largely excluded from the social and legal consequences of the implementation of gender equality, the protection of sexual privacy, and the plurality of relationships and lifeways. While the institutions were under the special protection of the state, they were also considered outdated and no longer desirable within the context of the new liberal view of life. The line of demarcation between conservative and progressive attitudes towards life often coincided with the decision for or against marriage and family. Conservative positions retained authority over the definition of the institution of marriage and family as progressive forces did

not address the issue in the first place. Marriage and family initially remained an unchallenged heterosexual and heteronormative domain.

This situation changed with the social visibility, acceptance, and establishment of homosexual lifeways. The more matter-of-factly same-sex identities and relationships were recognized, the more the once emancipatory *rejection* of the heteronormative institutions of marriage and family was perceived as social discrimination and *exclusion*. Societal normality is not only reflected in public acceptance but also in free access to social institutions. The call for legal equality for same-sex couples was implemented in two stages: through the federal law on registered partnerships for same-sex couples, which has been in force since January 1, 2007, and through the extension of civil marriage to same-sex couples, which took effect on July 1, 2022. The *move away* from traditional marriage and family that began during the “sexual revolution” has given way to a *dynamic of integration* in which established relationship forms have been opened up to same-sex identities and lifeways. This meant that the institution of marriage, which had rarely been discussed previously, moved to the center of the debate, while raising the new question of the specific qualities of different family forms.

The *break with tradition* lamented by the conservative camp solely involves the forms of marriage and family institutions. With regard to the institutions, by contrast, there has emerged a new *attachment to tradition* that is no longer limited by heteronormative factors. On the traditional side of the ledger, a common interest in marriage and parenthood raises the question of whether the “wrong” people – same-sex couples – are now striving for the “right thing” – marriage and family. Two new questions have replaced the outdated dispute over traditional ideas on marriage and family: 1. What does the extension of marriage mean for a contemporary understanding of parenthood and family? 2. What social-normative effects do the new parental gender configurations have on children? Or more specifically:

- 1a) Do opposite-sex couples enjoy a natural-biological privilege with regard to parenthood and family?
- 1b) Or do all couples have access to parenthood and family who can become parents and start families, with or without biotechnological intervention?
- 2a) Do children need a mother (cis-woman) and a father (cis-man) for their well-being?
- 2b) Or is child welfare independent of the biological gender configurations of their parents?

1.3. Church milestones

1.3.1 *Equal rights for same-sex love*

In September 1996, what was then the Council of the Federation of Swiss Protestant Churches (FSPC, now Protestant Church in Switzerland, PCS) supported the Swiss Federal petition on “Equal rights for same-sex couples”: “When two people of the same sex decide to live together on a permanent basis, they should have the opportunity to establish their relationship legally without discriminatory obstacles. We therefore support the basic aim of the petition [...] and hope for an objective discussion on this sensitive topic.”⁸ The topic of equality for same-sex partnerships was discussed in depth at two conferences, the results of which were included in two Swiss federal consultation responses submitted by the FSPC.⁹ The focus at the time lay on legal protection and the legally binding nature of same-sex partnerships. “Legal discrimination against these partnerships cannot be justified ethically. Equality before the law – the legal implementation of the Golden Rule – is part of the core of recognized norms.”¹⁰ This was to apply regardless of the personal-moral or theological-ethical assessment of same-sex relationships, while the legal and ecclesiastical-liturgical distinction between the institution of marriage and registered partnerships was emphasized.

1.3.2 *Strengthening marriage and family*

In the run-up to the referendum on the Swiss “Federal Law on Registered Partnerships of Same-Sex Couples”, the FSPC Council put forward a more comprehensive position on the subject in 2005,¹¹ supporting the partnership law and combining it with the demand for a “strengthening of marriage and family”.¹² In summary, the Council stressed the following: 1. the distinction between legal and ethical matters; 2. the right to equal treatment; 3. protection and legal security for binding relationships; 4. the promotion of community life; and 5. strengthening marriage and family. In view of the controversy within church and society that was already ongoing at the time, the Council concluded: “The improvement of the position of same-sex couples does not however have any negative effects on the status of marriage and family in society. Inversely, the rejection of the Partnership Law would not entail any improvements for married couples and families.”¹³ This section, as the entire style and positioning of the text reflects, was aimed at two church audiences: the ecumenical community¹⁴ and criticism of homosexuality within the church.

1.3.3 Family policy

The text mentioned above referred to a desideratum that still exists: “A number of urgent – and long overdue – challenges regarding family policy have in fact been emerging in the margins of the discussion on the partnership law. [...] Financial, health, and social policy represent far more useful and fruitful fields of advocacy with regard to marriage and family – in comparison with the Partnership Law. Even critics of the legal establishment of same-sex partnerships need to acknowledge that neither the approval nor rejection of the partnership law would change the current situation for families in Switzerland. Family policy is undoubtedly a growing socio-political challenge that both politicians and the churches will increasingly need to meet in the future. The deficits of a society that is increasingly declining in solidarity and less friendly towards children cannot however be remedied by degrading homosexual partnerships.”¹⁵ That observation now requires a different approach. Family policy is a comprehensive task for one and all, and is no longer negotiated along the lines of sexual orientation and gender partnership configurations, as was the case at the time.

1.3.4 *Plurality as the expression of the will of creation*

The pursuit of an inclusive understanding of marriage and family was the driving force behind the motion of the Evangelical Reformed Church of the Canton of St. Gallen on 19–21 June 2016 on “Family – Marriage – Partnership – Sexuality from a Reformed Perspective”.¹⁶ The subsequent report and response of the PCS Council were discussed at the 2019 Summer Assembly of Delegates, resulting in the phrasing: “We are wanted by God as we were created. We cannot choose our sexual orientation. We perceive it as the expression of the bounty of creation.”¹⁷ This neither entailed a “carte blanche” for sexual practices nor the abandonment of complex questions of sexual ethics in favor of a normativity of the status quo. It instead reflected the recognition of the plurality of sexual orientation as an expression of God’s freedom in his creative action. Respect for the diversity of life is anchored in the conviction that divine will can be expressed in very different self-understandings, constructions of identity, and lifeways. While biology describes forms of life, theology and the church recognize their qualities in terms of creation as well as their moral value. At the subsequent assembly in autumn 2019, this basic position was confirmed and solidified in three resolutions:

- “1. The Assembly of Delegates supports extending marriage to same-sex couples at the level of civil law.
2. The Assembly of Delegates recommends that the member churches adopt the potential new legal definition of marriage for church weddings.
3. The Assembly of Delegates recommends that the member churches continue to uphold pastoral freedom of conscience as a matter of course, as is the case with regard to all other occasional services.”¹⁸

The recommendations of the PCS Synod were each accepted with a two-thirds majority, reflecting a large degree of agreement with the positions of the Protestant sister churches in Germany and Austria. Apart from the approval of extending civil marriage to same-sex couples, the synod’s resolutions were of a recommendatory nature as their regulation falls under the individual jurisdictions of the Swiss cantonal churches.

1.3.5 Protection from discrimination

An in-depth discussion of the theology of ministry and blessing with regard to a dispensation for pastors who do not approve of same-sex marriage is still to be carried out. The recommendation for the freedom of conscience of pastors when it comes to marrying same-sex couples speaks to the sisterly and brotherly community spirit, committed to the unity of the Church of Jesus Christ, regardless of all differences in individual matters. It is not based on systematic theology, but anchored in the history of theology. From a church-political perspective, it follows on the previous distinction made between church weddings and the blessing of same-sex couples.

Moreover, the Swiss Parliament decided, in late 2018, to expand anti-racism criminal law (Art. 261^{bis} of the Swiss Criminal Code) to include discrimination based on sexual orientation. The PCS Assembly of Delegates welcomed the legislative decision at the time, as it corresponded with the Principle of Non-Discrimination in Article 10 of the PCS Constitution, stating that in “all its activities”, the PCS ensures that “no one suffers discrimination [...] in either word or deed.” The prohibition of all forms of sexual and gender discrimination addresses the speech used by the church, its pastoral and diaconal practices, and its symbolic-liturgical actions.¹⁹

1.3.6 Challenges to the church

Two fundamental aspects of the church’s self-understanding are reflected in the institutions of marriage and family: first, the modern division of labor between government and church in shaping the public (*polis*: law) and the private (*oikos*: morality) spheres, as was already the case during the Reformation – under the conditions of a society conceived as *corpus christianum*; and, second, virtue ethics, which is closely related to life in community, and was *inherited* from ancient culture and further developed in church and theological history. While the state was at best indirectly connected to the polis of God throughout the history of salvation (most radically in the present-day eschatology of “religious socialists”), the definition of Christian marriage and family could be linked more directly to the household of God (Eph. 2:19). The modern autonomous individual as a kind of ethical foundation was unknown to the ancient approach towards virtue ethics. To put it simply, the idea of personal freedom took the place of the order-creating community based in ontology. While individuals, in ancient times, had to adapt to the given conditions of the community, the shaping of society has since been subject to the modern idea of the autonomous person.

The fundamental importance of the church’s understanding of marriage and family and the theological references to it are interwoven. For that reason, changes in the traditional roles of mothers, fathers, and children can be perceived in churches as *crises of tradition*. Since the late nineteenth century, de-traditionalization processes have typically been driven by the civil society movements of disadvantaged individuals and groups fighting against unequal legal treatment. As a result, traditional norms and practices have come under pressure with regard to their legitimacy; a pressure only to be met by a kind of normative hyperbole that collided with fundamental human rights in such a blatant manner that it soon became legally untenable.²⁰ This dynamic emerges in church debates on socio-political issues in the form of a wave, in which traditional norms are often-times overstretched to the point of becoming a creed unto itself (as in the discussion on homosexuality and marriage), only to lose their meaning some time later or to recede into the background (as in previous debates on sexual morality and abortion).

The dissolution of traditional notions of marriage and family has had an impact on the historically evolved spheres of mediation between biblical-theological perspectives and societal reality. These social changes do not necessarily entail the loss of marriage, parenthood,

and family as *prominent areas of confirmation and substantiation of Christian life practices*. In order to retain their place, theology and the church need to constructively clarify three normative relationships: the relationship 1. between the internal Christian ethics of marriage and family and the secular political legal world; 2. between biblically and theologically legitimized marriage and family roles (man, woman, child) and plural constructions of identity and lifeways; 3. between the traditionally patriarchal *oikos* model (“father of the house”) in the Bible and the principle of equality and protection against discrimination as safeguarded by the liberal rule of law.

The perspective that views the dynamics of social flexibilization and pluralization as an “attack” on traditional ideas of marriage and family can be overcome if it is also viewed as an opportunity in connection with the Christian understanding of what it means to be human and the church’s self-understanding. This involves a continually renewed biblical-theological and ethical examination of contingent perspectives on people and the world and the discovery of their innovative potential instead of applying age-old standards (or truths) that weigh down and proscribe any such attempts.

2 Biblical-theological foundations for a Reformed understanding of marriage and family

The theological concept of the Covenant has been one of the most influential aspects of the Reformed Reformation, its theologies, and the political culture that was informed by it. Heinrich Bullinger is considered to be the father of covenant theology.²¹ For the Zurich Reformer, God’s covenant with his creation (Hebrew *berith*, Greek *diatheke*, Latin *testamentum*, *foedus*) is “in the strict sense a grace covenant [...]. It is God alone who offers the covenant in his ‘causeless mercy’. [...] God’s free ‘will’, which flows from his innermost being, at the same time, is revealed in the covenant, a divine will that initially refers back to God himself in the form of a broad self-commitment. The covenant that God offers is not a mere promise, but a divine self-commitment. [...] The content of the covenant is, however, essentially nothing other than the promise of God as God, so that the idea of the covenant is already factually present in the concept of God: ‘I will be your God’.”²² For Bullinger, the two testaments of the Bible testify to the single continuous covenant history of God with his creation, which becomes the hermeneutic key to his entire theology.

The upshot of Reformed covenant theology is that everything that happens in this world, all that people think, do, and hope, all that is done to them and causes them to despair, happens in and under the single eternal covenant of God. The second thesis of the Barmen Theological Declaration of 1934 programmatically formulates, with reference to 1 Corinthians 1:30: “As Jesus Christ is God’s assurance of the forgiveness of all our sins, so in the same way and with the same seriousness is he also God’s mighty claim upon our whole life. [...] We reject the false doctrine, as though there were areas of our life in which we would not belong to Jesus Christ, but to other lords.”²³ Reformed theology has its foundation in God’s covenant promise, reflects creaturely life before the primacy of this indicative, and derives from this its decidedly moral-critical perspective. This is not because the Bible has nothing to say in moral terms, but because the moral view focuses on the wrong subjects: human beings as they act instead of how God acts at all times. The transition from the indicative of the divine promise – concerning what *is* and *will be* – to the *human imperative* – of what *should be* – is biblically-theologically and epistemologically precarious and represents a permanent theological-ethical challenge.

2.1 Marriage from the perspective of covenant theology

2.1.1 *The covenant at the center*

A complementarity can already be observed in Reformation marriage theology, one which continues to have an effect on the church and theological debate on marriage to our day: this involves marriage as a consequence of God’s will set forth in “nature” (*creation*) and marriage as a result of God’s action that brings about relationships (*covenant*) in the world. The perspective of creation and covenant, which is currently presented as an alternative, was conceived in Reformed theology as a supplementary hierarchical relationship.²⁴ Initiated by John Calvin, the Christocentric approach led to Karl Barth’s double thesis of “Creation as the external basis of the covenant” and the “Covenant as the internal basis of creation”²⁵ “Creation is ‘the external basis of the covenant’, its ‘technical facilitation’, i.e. the provision and furnishing of the space in which it is to take shape. Conversely, the covenant is ‘the internal basis of creation’, its model, which, as the goal of creation, determines its architecture in advance in all of its individual qualities. Creation and covenant mirror one another, relate to one another like two ‘opposite images’. [...] Creation is ‘the possibility made possible by the covenant’; in Barth’s

words it is ‘the way to the covenant’.²⁶ The natural world, as creation, thus moves into the perspective of God’s covenant history with humankind. Conversely, in terms of theology of creation, the history of the natural world represents the dynamic realization of God’s covenant promise, which does not first appear in the Noahic, Abrahamic, and Sinai covenants, but is already set forth in the blessing of creation (Gen 1:22,28).²⁷

2.1.2 *The covenant of marriage*

Reformed covenant theology begins with the early work of Bullinger, who first developed it in the context of baptism, Eucharist, and marriage. Marriage occurs in the Old Testament as a “metaphor for the covenant of Yahweh with Israel [cf. Hos 2:16ff.20ff; 3.1ff. etc.]. God’s covenant with his people became the archetype for marital life, reliability, love, faithfulness, and exclusivity.”²⁸ In order to secure the institution of marriage, it was legally placed in the hands of the state during the Reformation. The Reformers were thus faced with the challenge of re-establishing the ecclesiastical and theological significance of marriage. The Reformation calling for the secularization of marriage as a “worldly thing” (Luther) had to be protected – then as now – from the false understanding that it no longer concerned God and his church.

The Reformation’s solution to the organization of the institution of marriage consisted in a division of labor between state and church. The state regulated *marriage as a contract*: “Although marriage also affects the soul and the inner person, it is also one of the external things that are subject to authorities. When sincere and virtuous authorities create proper marriage laws or adopt other proper civil laws concerning marriage, no righteous Christian should oppose them.”²⁹ John Calvin stated analogously in the Geneva Church Ordinance of 1561: “Since disputes regarding marriage are not a spiritual matter but are intertwined with the area of state order, they are part of the area of responsibility of the council.”³⁰ The state thus bore responsibility for the contractual aspects of marriage, which required a symmetrical relationship of reciprocity between the contracting parties.

This differed from marriage *as a theologically defined covenant*. Marriage was and remained a divine matter: “Following the conclusion of the marriage contract [...] one should not wait long before going to church and marital union [...]. The union should moreover begin with God and the intercessory prayer of the church. [...] And since God himself joined the first marriage and blessed

both spouses, the church, following the example and spirit of God, ordained that the spouses show themselves publicly, namely in the church, and announce and confirm their marriage there before the church community, receive blessings from the servant of God, and entrust themselves to the intercessory prayer of the universal church.”³¹ Unlike the situation involving the contract, God himself represents the party of the covenant and, in his sovereignty, sets the terms of the agreement and mutual promise.³²

The Protestant Reformed understanding of marriage, as based in the Reformation, can be summarized as follows:³³ 1. The institution of marriage requires both state and church as complements. 2. The ecclesiastical-theological qualification of marriage as an act and expression of God’s will must be distinguished from its legal contractual status. Citing Bullinger: “For the Lord did not indeed say: ‘What has been joined together no one should and can separate’, but he said: ‘What God has joined together, let no one separate.’”³⁴ And Calvin confirmed: “Solomon in Proverbs 2:17 thus calls marriage the covenant of God, for it is superior to all human agreements.”³⁵ 3. From a biblical-theological point of view, marriage is a relationship instituted by God, in which he joins the married couple.³⁶ In the words of Calvin: “When a man and a woman enter into marriage, it is God who presides [...]. This is why we read in Malachi that God is the contracting party, who, due to his omnipotence, joins the man and woman and approves of their union.”³⁷ 4. Marriage moves the intimate relationship of a couple from the private sphere into the political public sphere and into the space of the church community. 5. Marriage and family, as a constitutive social space for the formation and stabilization of reciprocal norms, perform a fundamental function that serves the cohesion of the community and the stability of society. 6. Human sexuality is not a mere means to an end, but takes on an intrinsic value that is preserved in marriage as a noble gift of creation.³⁸ 7. Through the mutual obligations of spouses to themselves and to their children, marriage and family are a form of worship in the original and fundamental form of human communion.

2.1.3 *Marriage in God’s covenant*

The discovery of God’s covenant as part of a theological understanding of marriage lies at the core of the Reformed theological understanding of marriage. But, as self-evident references to the covenant among Reformed Christians may be – at least in German-speaking Reformed theology – “approaches to ethics of mar-

riage with a perspective based in covenant theology” are “hesitant and extremely isolated”.³⁹ Karl Barth argued strictly in terms of covenant theology only when it came to marital monogamy: “Not only in marriage, to be sure, but primarily and supremely in marriage, God manifests Himself in His unity as Creator-God and God of the covenant. [...] As marriage is set in the light of this election and covenant, and comes under the command of the God of this election and covenant, it can only be monogamy.”⁴⁰ Hans-Joachim Kraus and Jan Milič Lochman interpret marriage in analogy to the covenant of God. “*The covenant applies*, the covenant of God’s faithfulness and in his light – under his protection – as well as the covenant of our humanity, ultimately and concretely: the covenant of our marriage.”⁴¹ And with regard to biblical theology: “God’s covenant with his people became the archetype for marital life, reliability, love, faithfulness, and exclusivity. [...] The fact that marriage is a reflection of God’s covenant, a parable for his election and fellowship with Israel and the community, reveals its ultimate purpose.”⁴² Marco Hofheinz presents a short taxonomy of biblical-theological covenant-marriage correspondences:⁴³ 1. Marriage as an image or parable for God’s covenant; 2. marriage as a place for a fruitful partnership corresponding with the covenant relationship with God; 3. the biblical parable of the covenant as a heuristic analogy (metaphor) within the context of sexual-ethical judgement; 4. God’s covenant as encouragement and empowerment to be faithful to one another; 5. the divine *agape* of the covenant as an explication of the covenant characteristics of faithfulness, durability, exclusivity, and fidelity.

The ethical-criteriological focus on marriage, however, is only derivative from the theological foundation of creaturely existence in the covenant.⁴⁴ At its core, the Reformed theology of marriage inverts the *institutionalized role theory of married spouses based on creation (order) theology* to become creaturely relationships based in covenant theology. The covenant does not describe the status of people taking on a membership or – in the partnership – are struck by Cupid’s arrow. Just as the covenant “does not discover Israel already existing as such, but it *creates* it,”⁴⁵ “God does not find those suited or qualified for the covenant, but creates them. The people of God and humankind become something that they previously were not through the covenant: God’s partner, reconciled and sanctified in Jesus Christ.”⁴⁶ This concept of covenant theology leaves all philosophical-essentialist, social-philosophical and social-political constructions of community behind. The covenant is not a metaphysical adhesive that (insolubly) glues together a social community or an institutional structure. Corre-

spondingly, an understanding of marriage founded in covenant theology cannot latch onto an existing order of being or substance in order to merely color or adjust it in terms of pneumatology and theological hermeneutics. God’s covenant instead emerges as a creative practice that occurs in every encounter between God and his creatures. Faithfulness to the covenant is therefore neither a mere quality of a relationship, nor a characteristic of a particular nature or structure, but the *history of an ever-renewed repetition of encounters marked by devotion, recognition, and affirmation*.⁴⁷ Since covenant and marriage represent neither status nor structure, it all depends on faithfulness – both in the covenant and in marriage – which consists in nothing other than a constant longing for repeated encounters.⁴⁸

“Encounters” here are not limited to the social behavior of subjects. It is fundamentally and foremost the constitutive characteristic of creaturely existence in general: seen vertically “with God and for God” and seen horizontally in encounter with fellow human beings.⁴⁹ The *vertical level* entails: “Man is, and is human, as he performs this act of responsibility, offering himself as the response to the Word of God, and conducting, shaping and expressing himself as an answer to it. He is, and is man, as he does this.”⁵⁰ To offer oneself as a response to God’s word (and even to become the response to God), from the perspective of covenant theology, means that the faithful God himself provides for the creaturely faithfulness in return and thus for the “fulfilment of the covenant”.⁵¹ *At the horizontal level*, this reflects the words “‘I am in that you are’”. This does not describe “the relationship between two static complexes of being, but between two which are dynamic, which move out from themselves, which exist, and which meet or encounter each other in their existence. The ‘I am’ and the ‘Thou art’ encounter each other as two stories. It is to be noted that they do not just do this subsequently, as though there were one story here and another there which at a certain point became a common history [...]. But in and with their creation, and therefore in and with the two-sided beginning of their movement and history, they are in encounter. [...] Thus the formula: “I am as Thou art,” tells us [...] noologically that this concept would at once be empty if the view basic to it were that of a pure subject and not of the subject in this encounter. And it tells us ontologically that we have to do with real man only when his existence takes place in this encounter, only in the form of man with his fellow-man.”⁵²

The vertical and horizontal dimensions of the covenant intersect in the consistent rejection of the modern idea of the autonomous, self-sufficient subject: “Presence is

impossible, except as a co-presence.”⁵³ God’s covenant of grace and blessing constitutes the pneumatologically determined being with or in connection with one another of the “embracing presence of God, which gives humanity freedom as a partner.”⁵⁴ The encounter, in *vertically existing within the story of God with his creation* and in *horizontally existing together in the stories of others*, builds an identity, in that people *share with each other* the stories that shape them but whose authors they are themselves not, just like the subjects of the “faithfulness in response” of God’s covenant.⁵⁵ Nothing other than this occurs in the marital pledge of fidelity, in which the couple by necessity moves towards God and places the obligation of fidelity into his hands. It is thus not a “covenant-theological exaltation of marriage, but a covenant-theological and reconciliation-theological framing of the relation of marriage to the covenant of the God of Israel with his people and the community of Christ Jesus[.] In this respect marriage is in fact a ‘sign of the covenant’.”⁵⁶

God’s covenant does not form the theological *model* for marriage but marriage instead appears as a *symptom* of God’s covenant. Marriage refers *allegorically* to the history of God’s covenant with humanity. The divine covenant action finds its voice “in the parable as a parable” and thus also in the marital relationship.⁵⁷ In this way, the covenant-theological perspective becomes a space for thought and speech in which marriage and family are religiously and socially qualified, reflected, and morally normalized. The language of the Bible lends currency to the marital values of commitment, singularity, faithfulness, vulnerability, and forgiveness. Human marriage does not aim to imitate the divine covenant and action (God is and remains God, people are and remain people). The human experience of God’s covenant presence is however reflected in the Christian understanding of marriage, in terms of human life experience and practice. Covenant theology speaks in the indicative of the existentials of life in God’s covenant, which aims at accordance with practice and not the observance of moral imperatives. God’s covenant forms the context of discovery (not the justification) for a Protestant Reformed understanding of marriage.

2.2 The reality of the covenant in divine blessing

The covenant-theological approach to marriage and family is not limited to structural analogies with God’s covenant acts. What is decisive here is that God’s covenant will is realized in the concrete instances of marriage

and family as well as in the history of his creation. The reality of God’s will is manifested from the beginning in the mode of divine blessing. “All that is made exists in and by the blessing of the Lord – this is the deep meaning of the dogma of providence which expands and elucidates the doctrine of creation and which is relevant in this context. It is because of God’s blessing that so much is said in the Bible about the blessing of parents as the truly and finally decisive thing which they can do for their children and which they must not fail to do. If only as creatures, yet still by God’s order they can truly bless. The ultimate point of all care for children, of all instruction and guidance by direction and especially by example, of all real loving and tending of children, is that we ourselves bless them as mediators of the divine blessing.”⁵⁸

God’s benedictive presence, full of blessing, is revealed in the “equally strong and caring presence of God among his creatures” in a “both careful and resolute participation of God in their history” with a “no less reserved than passionate interest of God in their existence.”⁵⁹ Life under God’s blessing does not answer the question of *what* life is but *what it is like* and *what it relates to*. Magdalene L. Frettlöh points to the irritation associated with the idea of a successful life “as an expression of *God’s presence in blessing*”: “That natural growth and prosperity, no less than the blossoming of withered and the renewal of failed life, that indeed vitality in general can be traced back to the blessing of God and not just to the self-organization of life and its possibilities for regeneration, cannot be *asserted*, but only *attested*. It is not accessible to *theoretical* knowledge, but only to *practical* knowledge, a practical knowledge that [...] assumes a *presence* of God in history, or even better, which only opens up to those who allow God himself to ‘place them into the space of his being’ and thus participate in his reality-forming presence”.⁶⁰

The covenant history of God in/with/through his creation historically (and thus currently) emerges in the creaturely life blessed by God. One can only speak “*entirely unhistorically*” of creation and God’s covenant.⁶¹ Unhistorical however neither means timeless nor unreal but aims at a particular mode of understanding: While, as a practice of faith, creation and covenant lie beyond any theoretical or scientific confirmation,⁶² they call to be related biographically and grasped collectively. Creation and the covenant are present precisely in the way in which people experience themselves as creatures in a covenant with God.

Reformed theology therefore centers on the communal application of God’s action to the present and God’s covenant with his people at Sinai in particular: “I will be

your God, and you shall be my people.” (Deut. 26:17; Lev. 26:12) The covenant words shall and must be heard time and again.⁶³ Dietrich Ritschl summarized listening to God’s word as comprehensive life practice in the following question: “Does the action I am contemplating, with regard to an individual story (or fate) or a particular question, correspond with what our fathers confessed, taught, and hoped, what we remember from the Bible, what Jesus said, did, and enacted (what Moses said, what Yahweh sought)?”⁶⁴ Learning to perceive oneself and the world within the horizon of biblical divine experience means standing within the “biblical ‘stream of language’”. What we hear becomes a biotope in our life practice. Very little today is reminiscent of the early beginnings of Christianity. We “in many ways no longer ‘live in’ the biblical stories. They are like empty, deserted streets of the city in which we live. Someone still has the old city maps [...] but the houses are empty and we no longer know the streets. That is a tragedy, not only for the language, but also for the church.”⁶⁵ Standing within the biblical stream of language does not mean reading the Bible as an instructional book for life or a moralistic manual of justification on our own behalf. It is instead important to travel with the biblical story of God’s salvation, liberation, and covenant with his creation and to read our own life practice into and derive it out of the biblical witness.⁶⁶

This performance that corresponds with the “‘standing within’ and remaining”⁶⁷ in God’s story constitutes a strengthening of divine blessing. Human acts of blessing presuppose the divine effect of blessing, as human beings cannot perform blessing of their own accord and, from a human point of view (which does not include the divine standpoint), there would be nothing worthy of blessing. Human blessing is a strengthening reminder of that which God has blessed. What God blesses is beyond any moral verdict. Blessing is neither the divine confirmation of human conformity with norms, nor is it a positive sanctioning of human behavior, but it is the presence of God in the community of his creation. Blessing means wishing to view a vulnerable world through God’s loving eyes. As impossible this view is, it is absolutely necessary as a standard for human acts of blessing. “If God’s blessing originally aimed at supporting creaturely life for it to fully develop in a community of creation, then acts of blessing among human beings do not correspond with God’s will for blessing when it involves giving blessings to conditions that endanger, obstruct, and suffocate a life in which all can enjoy abundance. Because God’s blessing counteracts lacks in creaturely life, his blessing is needed first and foremost by those who suffer a lack of their daily bread, in the

comprehensive sense of the word. Just as God’s blessing expresses the affirmation and recognition of the individual identities of his creatures and he blesses them with his presence, those are especially in need of the human mediation of divine blessing who lack in the friendship and support of others. Those who ask for God’s blessing on their behalf and promise it to them, thereby take it upon themselves to actively remedy this deficiency.”⁶⁸

2.3 Consequences for the current discussion based on covenant theology

What are the consequences of the perspective of covenant theology on the topic of same-sex marriage and parenthood, which are so hotly disputed within the church and in theology? For the people of the Bible and the Reformation, only different-sex marriage was imaginable. Bullinger marked a decisive difference in his comprehensive interpretation of God’s covenant as a dynamic, telic Judeo-Christian covenant history. Baptism was added to Abrahamic circumcision as a covenant sign.⁶⁹ Similarly, the Last Supper is interpreted from the perspective of the Passover meal of the Exodus in terms of covenant theology. Old Testament signs do not differ from New Testament signs by dint of their “nature” or a hierarchy of salvation history, but only “by their place within the history of the covenant”.⁷⁰ As the *covenant history* attested to in the Bible is real *world history*, the church stands within the one single and telic covenant history. This of course also applies to the Reformers themselves, who could not foresee anything beyond their own time, but were aware of their insights within the framework of their *Zeitgeist*. They too were not surpassed within God’s covenant history, but can and need to be supplemented just as God continues to carry on the history of his covenant of blessing. The reality of the covenant in the contingent world reveals and substantiates itself in the insight into the temporality of church theologies of marriage and gender within marriage.

The continuity of the single covenant history within contingent world history is founded in the Trinitarian God as one and the same subject acting at all times. Bullinger and Calvin therefore emphasized the distinction between the covenant founded by God and the contract concluded by spouses. It was not what people decided (contract) but what God joined together (covenant) that people are not to separate (Mark 10:9; Matt. 19:6). This also means that what God joins together should not be doubted, disputed, or prevented, as this would not only

deny human rights, but would in fact contradict God's will. One central point of contention in the ecclesiastical-theological discussion of marriage emerges from the shifting or confusion of the subjects of action. As couples actively decide for each other and publicly declare the binding nature of their relationship, their decision as an expression of God's will – from a Reformed theological point of view – involves an essentially *pathic* dimension. The conflict arises when the pathic dimension of being divinely joined is dismissed and only the human expression of will remains – as a response to the civil matter at hand. It is then no longer God but the couple themselves who are the subject of the covenant, and marriage loses its place in God's covenant history. Three aspects are essential to a covenant theological perspective on marriage and family:

1. *The constitutive meaning of human community:* "Then the Lord God said: It is not good that the man should be alone." (Gen. 2:18) The stance based in creation theology that, while recognizing people in same-sex relationships as being "in God's image", but which excludes them from marriage and family, contradicts an essential characteristic of their creaturely destiny, namely not to exist alone. In terms of covenant theology, "true liberation [...] between people succeeds only through faithfulness, established in *free* faithfulness and not in a forced and legally guaranteed faithfulness. But in *free faithfulness*."⁷¹

2. *No false moralization over marriage:* Marriage becomes a superficial moral issue when the married couple – instead of God – are fashioned into the authors of their relationship. God's covenantal acts with the couple then become the matter of a heterogeneous, interest-driven gender morality and of political-ecclesiastical power issues.

3. *There is no opposition between creation theology, Christology, and eschatology:* Instead of a separate and independent reading of individual Old Testament regulations (Lev. 18:22; 20:13), covenant theology emphasizes their functional connection to the covenant promise (Deut. 26:16-19) and covenant expression (Deut. 26:17; Lev 26:12; Jeremiah 31:33 and others).⁷² The commonality of Bullinger's and Calvin's theology lies in the unfolding of the one *testament* from Sinai by the God attested to in both testaments. Two questions are central to a theology of marriage from a Reformed point of view: Is God himself the subject of marriage? And does the decision for marriage stand within God's intended "I will be your God"? Every Reformed wedding needs to presuppose a double "yes" here. It is the pneumatological

"yes" of the present congregation that anticipates God's action through his spirit. Because, at every wedding, this "yes" is *assumed* with hope (as cannot be otherwise be the case when it comes to human beings), its refusal – apart from obvious *non-theological* reasons connected to personal behavior – cannot easily be justified *theologically*.

In summary, the following can be established for the understanding of marriage and family from a biblical and Reformed theological standpoint: 1. Marriage and family have their origins in God's covenant and blessing. 2. They stand under the benedictive presence of God in Jesus Christ through his Spirit. 3. The church petitions for the blessing for marriage and children since and inasmuch as God himself expresses and realizes his covenant will in this marriage, parenthood, and childhood. 4. The church places marriage and family within the realm of the biblical narratives of God's actions in and with his creation, towards creating relationships, blessing, preserving, and telic guidance.

3 Aspects of reproductive medicine

3.1 The wish for a child between granting and attaining

"At no time has the inviolability of human dignity been discussed with such passion as it is today, with it being invoked in opposition to the destructive potential of bio-research and technology and is to save us from a dreadful new world in which human beings are made into raw materials as embryos, as fetuses aborted at will, purged as early as possible in the case of disabilities, and disposed of in old age through euthanasia. This new world has in fact already begun. As with all major scientific discoveries and technical inventions, the ethical, political, and legal discussion in bioresearch and technology only began after the development had already begun to progress. Whether human beings should be permitted to move from being a creature to being a creator only began to be discussed once children were already growing up who had only come into being in a Petri dish thanks to an act of human creation. People only began to demand that children's disabilities be accepted as fate only once it was in fact no longer fate, as it could be detected, first in the prenatal fetus and later in embryo preimplantation diagnostics. It is true that the law can prohibit things that are biotechnically feasible. But such a ban does not reflect evidence of fate, only that of a political compromise. It is changeable and reversible."⁷³

Reproduction is a public matter subject to moral norms and political regulations. The medicalization of the female body that began in the 19th century gave way to a social-technological approach in the first half of the 20th century, including social hygiene, sexual and demographic policy, female reproductive performance, the criminalization of abortion and forced sterilization. Women's bodies were moved from the sphere of intimacy into the public arena, as the national body of the populace, becoming the object of interest-driven policy.⁷⁴ In no other area of society do private and public perspectives intertwine so closely as in the case of female fertility. Modern reproductive technologies follow on from this. Human forms of self-understanding and world views shape the way in which reproduction is considered, how it is demanded, and what measures are subsequently taken. The term used in the German language for fertility centers, *Kinderwunschzentrum* ("child-wish center") reveals a telling shift in subject and object. While it continues to involve the birth of children, the subject "child" becomes the object of desire on the part of others. Modern biotechnologies follow their own ways of thinking, shape their own normative orders and evaluative orientations. They are both means to particular ends and horizons, within which goals are set, intentions are developed, and ends are pursued. Needs inspire technological innovation and technologies lead to needs.

It is one thing to discuss and make decisions about *embryos* from the perspective of reproductive medicine. It is an entirely other thing to take specific medical measures into consideration to become the parents of a child. Parents are always the parents of their *child* and never those of an embryo.⁷⁵ The hotly disputed question of what connects an embryo to a child, or what makes one into another, forms the flip side of the question of what makes intended parents, who do everything they can to have their longing fulfilled, the parents of their child. This form of wishing loses the innocence of the painfully unavailable when it pushes for action, control, and responsibility instead of serving to liberate from such things. The objection raised particularly by those critical of reproduction technology must however be questioned in two regards: Firstly, the harmless expression of the desire to have children shrouds the interpretation already known from the Bible in which childlessness is considered a religious, moral, or social flaw, so that the desire to have children of one's own corresponded with strong social pressure. There is, secondly, something deeply contradictory, in a society that is thoroughly based on actuarial evaluation and the calculation of risk, about specifically reserving these matters of fate to couples with a desire to have children.

Bioethical debates that focus on decisions and actions tend to either reduce wishes to calls to action or downplay them as inappropriate and presumptuous. It is of course a privilege not only to be able *to express wishes*, but also to *address* them. But it is also an often underestimated privilege *to be wished for*. From both perspectives, the wishing counts on the bestowal of the wish that can generally be viewed as the *external* resonance of the wish. A wish becomes superfluous if the desired object can be realized *by itself*. Wishing and realizing differ in their social positioning: those who enjoy the necessary agency remain within their own spheres, while those with wishes need to move beyond their personal space with their wishes. People wish *for themselves* something *from others*. In figurative cases, as well, in which people wish for something from themselves, the wishing ego confronts the ego to which the wish is addressed. Wishes create a horizon of relationship: The wish constitutes the relationship in that an essential aspect of the person making the wish is given over to the person or entity to whom the wish is addressed.

Wishes are risky per se as they appeal to their uncontrollable bestowal, involve the need to reckon with any outcome. The dialectics of wishing lies in that with every wish expressed, one also wishes or needs to wish that "not my will, but yours be done" (Luke 22:42). If this other side of the matter is eliminated, however, the wish turns into a demand, an order, or a command. The peculiarity of the social relationship of wishes is revealed in contrast with demands. The latter comes about when a person has the social power to issue such a demand and enforce it. The demander is in a position of actual power or moral authority over the person to whom the demand is made. When it comes to wishing, the hierarchy is reversed as the wish is addressed to a person or entity who is expected or hoped to bring about and to want to bring about something that the wishers cannot provide for themselves. This combines wishing with trust. At the same time, the hierarchy of the bestowal is reversed again, insofar as the granters are themselves present in their bestowal.⁷⁶

The linguistic game involving the desire to have children and those of nuanced specialist discourses on reproductive medicine, bioethics, and the law do not mesh well as a matter of course. The boundaries between parental wishes, needs, and demands, between medical assistance and service, and between altruistic motives and economic calculus are fluid and often closed to categorical judgments. The medical *depathologization of infertility* must not be confused with an anthropological

depathologization of reproduction. The categorical error is encountered in the reduction of reproduction to a technical project, which is just as prone to biomedical fantasies of omnipotence as it is to the radical critique of technology. Medical efforts to overcome infertility are not aimed at the pathic dimension of conception and birth, but at suffering (Greek: *pathein*) from one's own infertility. Reproductive medical assistance responds to the desire to be able to conceive, bear, and give birth to a child as the necessary preconditions for one's own parenthood. Reproductive medicine takes its aim at the expectation of parenthood without being able to bring about its *fulfillment*.

3.2 Biotechnological possibilities and "playing God"

Medicine and biotechnology have effected a change in biological reproduction "from experience to design, from contingency to arrangement, from heteronomy to autonomy".⁷⁷ "This disenchantment can fill us with a certain melancholy, but also with a feeling of insecurity when it is associated with the questioning of the biological foundations of our existence that had been previously considered to be a natural given."⁷⁸ This explains the importance and explosiveness of the sociopolitical debates over biological and reproductive technologies. In late-liberal societies, bioethical debates aim at "life in the modern, functionally differentiated and plural society."⁷⁹ Whether this concerns brain death, PGD, organ donations, assisted suicide, or neuro-enhancement, it always touches upon fundamental issues: human dignity and identity, freedom and self-determination, justice and solidarity, moral obligations and rights as well as the possibilities and limits of human responsibility. What characterizes a humane society and which norms, goods, and values are indispensable there?

In the past, bioethical questions were the cause of serious church-theological controversies. If human biotechnologies are consistently rejected, questions involving medically assisted reproduction become superfluous. Two key objections should be briefly mentioned here. One accuses modern biotechnologies of presuming to play God.⁸⁰ The biblical context here involves divine reactions to human hubris as in the scene of temptation by the serpent in the Garden of Eden – "and you will be like God" (Gen 3:5) – and the human fantasy of omnipotence in the building of the Tower of Babel – "nothing will now be impossible for them" (Gen 11:6). Revealingly, morality in the first case and cultural and

moral plurality in the second, initially come into the world in these stories. From a biblical point of view, morality and plurality are both consequences and characteristics of human arrogance and hubris. People can insinuate a divine point of view not only through their *actions* but also by *demanding* and *forbidding*. From a biblical point of view, moral hubris, analogous to technological hubris, consists in relying exclusively on human knowledge and skills. The second objection is directed against the manipulation of human nature and is based on a strong analogization or even identification of scientific nature and divine creation. Nature becomes a universal ethical principle with regard to the inviolable that is worthy of absolute protection. The experiences of God witnessed in the Bible, however, already contradict a static understanding of nature in this sense. God's action and his reality are particularly evident in events that defy all naturalness, beginning with the saving of creation on Noah's Ark (Gen 6-9), the miracles of the journey through the Red Sea (Exod. 13f.), the provision of sustenance in the desert (Exod. 16), the strength of Samson (Judg. 16), the birth of Jesus, his miracles, resurrection, post-Easter appearance, and ascension, all through the Pentecost miracle (Acts 2). The actions of God, his Son, and the Holy Spirit appear in events that are by nature – and from a scientific point of view – impossible. The people of the Bible understand: God reveals himself as the creator of nature and not as a natural principle. By contrast, creation cannot rid itself of its nature without being fully absorbed in it. As part of creation, life is more than its nature. Nature provides life with continuity, but not its meaning and purpose.

The particular challenges posed by biotechnologies for theology and the church cannot be denied here. The more human reproduction is removed from its bodily attachment (sexuality) and becomes the subject of human judgement, decision-making, and action, the more urgent bioethical and theological-ethical reflection becomes. One feature of biotechnologically assisted reproduction is "that a sphere of life that, like no other, is anchored in the intimacy of a two-person relationship, needs be opened up to third parties".⁸¹ But even before modern reproductive medicine,⁸² procreation and giving birth were not just intimate, bodily facts, but were embedded in moral, legal, and political orders – third parties indeed – which transformed the "nature of the matter" into a *communal* horizon of meaning and purpose.⁸³ The immensely expanded possibilities of medical control, intervention, and design would not be possible without social individualization processes, which have led to a strengthening of the self-determi-

nation of the individual person and the relativization or dissolution of formerly collective moral norms and orders that were taken for granted.

3.3 From procreation to reproduction

The idea of reproductive control and planning lies at the heart of modern reproductive medicine. Modern biotechnology has added new pro-natal pregnancy and birth control methods to age-old anti-natal techniques. This is no longer (only) about preventing a pregnancy or the birth of a child, but inversely also about bringing it about regardless of the particular physiological and biological situation. If the old idea was to have “sex without reproduction”, the new strategies make it possible to achieve “reproduction without sex”. This reversal of the decoupling of sexuality and its possible consequences marks a turning point from procreation to *reproduction*: while procreation emphasizes the (passive) character of conception as an external effect that is removed from human activity, reproduction focuses on (active) decisions and interventions with the help of biotechnological procedures. Pregnancy as a state of hopeful “expectation” becomes purposeful work regarding “unborn life”⁸⁴ in a new “culture of reproduction”.⁸⁵

Biological reproduction signifies the ability to or capacity for enduring vegetative or generative breeding and for sexual procreation. The term emerged in the second half of the 18th century in political economics and moved into the areas of sociology and biology in the 19th century.⁸⁶ The prefix “re-“ in “reproduction” suggests that the “producers” are themselves “products” of a previous “production” and continue something that others have previously done to and with them. This is connected with a social “conceptualization of society, which is organized according to the model of capitalist production and economy, as established in the late 18th century. Only under these epistemological conditions can a fetus be thought of as the subject’s property. In fact, the idea of producing something self-similar is only possible if this product can be produced technically, i. e. without external influences.”⁸⁷ The first artificial insemination in 1875 by the British doctor John Hunter can be regarded as the first step towards reproductive medicine. The phenomenon was actually born with the birth of Louise Joy Brown in 1978, the first human being conceived in vitro. A few years later, on April 26, 1985, the first artificially conceived child – also a girl – was born in Switzerland.

Ever since, in-vitro fertilization (IVF) and intracytoplasmic sperm injection (ICSI) have become a part of everyday reproductive medicine. Between 2002 and 2019, the number of couples treated almost doubled from 3,467 to 5,993. While the 5,378 treatment cycles initiated in 2002 resulted in pregnancy in 33.2% of the women, the pregnancy rate for the 11,163 treatment cycles initiated in 2019 increased to 47.2%. The 910 births in 2002 (= 25%) increased to 2,204 children born in 2019 (= 34.7%).⁸⁸ Of the total of 86,172 children born in Switzerland in 2019, almost 2.6% were conceived in vitro. Due to the increased number of 1-embryo transfers, the number of multiple births in IVF pregnancies fell from 16% in 2016 to 6% in 2019.⁸⁹ Preimplantation diagnosis, which was introduced in 2017, was used by 55 women that same year and by 352 women in 2019. In 2019, this was prompted in 26 cases by the indication of a risk of transmission of a serious illness from parents to the child.⁹⁰

Year	2002	2019
Couples with IVF treatments	3467	5993
IVF cycles	5378	11 163
Pregnancies after IVF	33,2%	47,2%
Live births after IVF	910 children (= 25% of pregnancies)	2204 children (= 34,7% of pregnancies)
Percentage of all births	1,3% of 72 372 children	2,6% of 86 172 children

The average age of the women treated and their partners has shifted only slightly from 35.9 years (women) and 38.9 years (partners) in 2007 to 36.6 and 39.6 years in 2019. In 2019, 99% of the indications for reproductive medical treatment related to infertility in women (26%), men (34%), or both partners (12%). The use of donated sperm cells decreased significantly between 2007 and 2019: in couples from 4.2% to 2%, in cycles from 3.2% to 1.9%, and in transfers from 3.2% to 2.1%.⁹¹ In contrast, the number of both conceived and destroyed embryos increased rapidly between 2007 and 2019. In 2007, of the 16,439 embryos conceived, 218 were preserved, 154 were thawed, 15,334 (= 93%) were transferred, and 1,241 (= 7.6%) were destroyed. In 2019, on the other hand, of the 32,575 embryos conceived, 11,029 were preserved, 4,924 were thawed, 9,641 (= 29.6%) were transferred, and 12,557 (= 38.6%) were destroyed.⁹²

Year	2007	2019
Average age of woman	35,9 years	36,6 years
Average age of man	38,9 years	39,6 years
Sterility of woman	16,3%	25,8%
Sterility of man	46,9%	34,4%
Sterility of couple	22,8%	12,2%
Embryos conceived	16 439	32 575
– of which preserved	218	11 029
– of which thawed	154	4924
– of which transferred	15 334 (= 93%)	9641 (= 29,6%)
– of which destroyed	1241 (= 7,6%)	12 557 (= 38,6%) ⁹³

This brief statistical overview documents the growing matter-of-fact nature of the use of reproductive medicine measures. The normalization of medically assisted reproduction has also been reflected in the significantly changed manner of dealing with the embryos created using IVF. The practice is no longer particular reminiscent of the intense debates in the past over the protection of prenatal life and of embryos.

3.4 Reproductive autonomy

The term “reproductive autonomy”, coined by Ronald Dworkin, is central to current discussions on the issue.⁹⁴ Individual reproductive freedom represents a concretization of personal rights and liberties that are constitutionally guaranteed in liberal countries. This “essentially describes the right of every individual to be able to make self-determined decisions about having children, i.e. whether, when, and with whom to have children. Both the right not to be forced to carry a child to term and the right not to be prevented from having a child are of a highly personal nature and constitute a human right.”⁹⁵ Reproductive autonomy protects the realm of personal convictions, judgments, and decisions with regard to one’s own reproduction and is founded in the human right to the use of people’s own bodies as they deem fit. The scope of reproductive autonomy “as the ability to have one’s own moral convictions in reproductive matters and to take responsibility for them” and the question of whether and to what extent “the legal positions of third parties and public interests can impose limits on reproductive self-determination” remains a controversial matter of debate.⁹⁶ From a perspective broadly based on basic human rights, reproductive self-determination derives from the legal status of the person, regardless of their biological-natural constitu-

tion, their social context, or any asserted normativity.⁹⁷ Their particular worthiness of protection results from the constitutive bodily entry into relationship, in which people put their entire physical existence at risk. The right to reproductive freedom marks the complex and controversial ethical question of “what we are permitted to wish for in terms of our own desire to have children”.⁹⁸

The right to reproductive freedom connects three elementary basic rights specified here with regard to human reproduction:

1. *Self-determination*: The right to self-determination protects personal freedom from any form of external determination. Every person should be able to lead what they think is a good life according to their own ideas and without external influence. The freedom to make one’s own life decisions is considered to be essential to the formation of personal identity. Within the context of human reproduction, this includes the right of every woman and every man to be able to decide for or against children freely and without interference from the state or third parties. Reproductive self-determination emerges here in the form of negative protective rights (*reproductive freedom*). In the course of biotechnological developments, the perspective of reproductive self-determination was expanded to include positive demands (*procreative autonomy/choice*). Infertile couples should receive reproductive medical support to realize their desire to have children, or should at least not be prevented by the state from being able to take advantage of such measures.

2. *Physical integrity*: The law protects people’s physical and mental health, vulnerabilities, and bodily integrity. It guarantees that they are able to make decisions about matters concerning their own bodies. The forced sterilization of people with mental illnesses, which was carried out even in Switzerland up until the 1970s, and the compulsory procreation known at times in dictatorial regimes represent serious attacks upon physical integrity.

3. *Protection of privacy*: This legal principle is derived from general personal rights and guarantees a private protective space for people’s spheres of intimacy and their close relationships. This area also includes the desire to begin a family and its realization, as well as the protection of close family relationships from external intervention. The European Court of Human Rights has, in various judgments, held that access to reproductive medicine “is a fundamental part of the protection of the human right to family and private life”.⁹⁹

The call for reproductive self-determination cannot be separated from the emancipatory struggle of women against traditional patriarchal gender orders and injustices in gender relations. Biomedicine is sometimes credited with playing a compensatory and supportive

role in enforcing political and legal gender equality.¹⁰⁰ Eight aspects of reproductive self-determination can be distinguished in which the biotechnological developments of the last several decades are reflected directly:¹⁰¹

	Right/prerogative for...	Processes/Practices
negative protective rights	The right to have a child or no children (reproductive freedom)	
	1. prevention of pregnancy	<i>Contraception, no obligation to give birth</i>
	2. (elective) abortion	<i>Provisions allowing for abortion within a particular period of time</i>
	3. no prevention from conceiving and bearing a child	<i>No forced sterilization or politically driven eugenic repression</i>
positive rights/prerogatives	Reproductive autonomy/choice	
	4. assisted reproduction	<i>IVF, social egg freezing,¹⁰² (uterus transplantation)</i>
	5. ability to decide on carrying a child to term with a predisposition to a serious disease	<i>PGD, NIPT,¹⁰³ PND,¹⁰⁴ selective abortion¹⁰⁵</i>
	6. ability to influence characteristics of a future child that are not connected to disease	<i>(PGD, CRISP/CAS9¹⁰⁶)</i>
	7. access to reproductive ability via third parties (and the ability to offer reproductive ability to third parties)	<i>heterologous or donogenous insemination, (egg donation, surrogate mothers)</i>
	8. Adoption	<i>No categorical prohibition for adoption</i>

The eight legal issues raised within the context of reproduction reflect the reality of reproductive medicine and not the current legal situation in Switzerland. Some (the procedures listed in parentheses) are banned in Switzerland, others only apply under certain conditions or to a limited group of people. The introduction of marriage for same-sex couples has added a new question to the intensively debated question of *which* reproductive medicine measures should be made accessible, namely that of *who* should obtain access to medically assisted reproduction. Swiss reproductive medicine law now focuses on the needs and concerns of opposite-sex (married) couples.

1.–3. Negative protective rights are part of the body of basic rights and aim at the protection of women as legal subjects. This reflects the indissoluble physical unity of mother and child during pregnancy. Every decision concerning or influence on prenatal life *in vivo* has a direct impact on the bodily integrity of the pregnant woman. The legislation thus (largely) abstains from judgment and prohibits any intervention on the part of

third parties (including the husband or partner). Bodily integrity, protected by law, extends to the female body and all that can develop from it and through it.

4.–7. The negative and positive prerogatives involve aspects arising from the personal freedom to reproduce. The *negative* right to have a child of one's own prohibits preventing people from having a child if they wish to become parents of their own free will. The *positive* right to have a child exists regardless of the person's biological or medical fertility or capacity to bear children. "Accordingly, the desire to have a child or not, and the decision (as a couple) to conceive a child or to decide against it, neither needs to be evaluated for its necessity nor does it need to be justified before state bodies."¹⁰⁷ There is no symmetry between the right not to have a child and the right to have a child. While the protective right does not guarantee for there not to be a child, the inverse right also does not automatically result in a child. The legal prerogatives relate to the desire to have children and the use of reproductive medical measures to achieve this end, but do not relate to

the child itself as the possible result. “There can be no right to a child (one can never have a right to another person). [...] To be able to exercise reproductive autonomy requires [...] circumstances in which this can also be exercised.”¹⁰⁸

4. The right to *assisted reproduction* within the framework of IVF marked the beginning of modern reproductive medicine.

5. Preimplantation genetic diagnosis (PGD), which was legalized in Switzerland in 2017, allows for the *examination and selection of germ cells and embryos in vitro*. It is restricted to couples who are either carriers of a serious hereditary disease or who cannot have children naturally (due to infertility) and may only be used if the child is at risk of developing a serious, untreatable disease before the age of 50, and one which is regarded by the parents as untenable.¹⁰⁹ While PGD is subject to restrictive regulations, non-invasive prenatal diagnostics (NIPT), which has been available in Switzerland since 2012, is not subject to any such restrictions. Since the blood of the pregnant woman contains cell-free DNA fragments from the genome of the fetus, its genetic characteristics and dispositions can be determined (without actually providing medical diagnoses) using a blood sample taken from the pregnant woman herself.¹¹⁰ These tests are also freely available on the Internet for the obligatory prenatal diagnostics and can be carried out privately as direct-to-consumer tests. Due to the rapid and early results, the NIPT makes selective abortion possible within the legal deadline.

6. While decisions on selection in the case of artificially created embryos are made with a view to the “best” hereditary factors, genome editing (CRISPR/CAS9) also allows for targeted interventions into the germline of embryos. Unwanted genes can be removed or “switched off” and altered genes can be inserted.¹¹¹ Contrary to the previous assertions and demands, the point here is not to have a child, but to have a *specific* child.¹¹² Manipulation of the human germline is prohibited in Switzerland and many other countries. Proponents argue that genome interventions can potentially overcome serious genetic diseases and thus prevent the need for embryo selection.

7. With the extension of marriage to same-sex couples, the demand for biological-genetic support from third parties has gained momentum. Their ability to have children depends on the donation of germcells (sperm, egg cells) and embryos or on surrogate mothers or uterus transplantation. In contrast with the other measures,

this type of support is not of a corrective or supplementary nature, but of a preconditional or constitutive nature, as without it, reproduction could not take place. The artificial insemination of the female egg cell with the partner’s sperm (homologous insemination) is currently permitted for married or unmarried opposite-sex couples and sperm donation from third parties (heterologous insemination) for married opposite-sex couples (Art. 3.3 Swiss Reproductive Medicine Act, RMA). With the extension of marriage to same-sex couples, same-sex female married couples now have new access to sperm donations.¹¹³ Sperm donations remain prohibited for individual women (Art. 3.2a RMA) as well as egg cell and embryo donations and surrogate mothers (Art. 4 RMA).¹¹⁴

8. The extension of marriage to same-sex couples has brought about the *equal right to adoption*. Unlike individual persons, couples in a registered partnership were excluded from adoption. There was only a possibility to adopt, as a stepparent, the biological children of one’s partner.

3.5 Same-sex reproduction

3.5.1 Medical and social infertility

Reproductive autonomy places human reproduction within the scope of basic human rights and establishes a fundamental human right to procreation. For the Swiss Federal Court, “the wish for children represents an elemental manifestation of one’s personhood”.¹¹⁵ At the same time, the legislation has excluded the realization of the wish of same-sex couples and individuals to have children by refusing them the necessary biological-genetic *support of third parties* (sperm, egg cell, embryo donation, surrogate motherhood). This contradiction allows for two interpretations: There are either major legal reasons for the unequal treatment of opposite-sex and same-sex couples, or the unequal treatment represents (politically motivated) legal discrimination based on sexual orientation (Art. 261^{bis} of the Swiss Criminal Code).¹¹⁶

Any unequal treatment is discriminatory if it runs counter to the legal principle that likes must be treated equally (principle of equality) and others unequally (principle of difference). Unequal access to reproductive medical measures for opposite-sex couples and individuals could only be viewed as non-discriminatory if *unequal* consequences of having the *same* desire to have children can be legally and ethically justified. This heated

discussion has been fueled, above all, by the condition of *infertility* in the legal provision that medically assisted reproduction methods may only be used if the infertility or the risk of transmission of a serious disease cannot be remedied in any other manner (Art. 119.2c Swiss Const.).

In its 1996 statement on the popular initiative “for the protection of people from manipulation in reproductive technology”, the Swiss Federal Council referred to infertility as a fundamental “prerequisite for access to reproductive medicine [...], i.e. unwanted childlessness for a certain period of time despite regular unprotected sexual intercourse.” This underscored that, in the interest of child welfare, only couples of different sexes could have access to reproductive procedures from the outset. Single and same-sex women were excluded. “Although these are usually fertile, they are not able to reproduce without a male partner.”¹¹⁷ The distinction between *medical infertility* and the *social inability to reproduce* was thus expressly not biological and natural but was justified by evoking the *welfare of the children*.¹¹⁸

The Swiss Federal Council’s statement on the Same-Sex Partnership Act of 2002 maintained the distinction but hid the justification involving the best interests of children behind a reference to the ban on sperm donation for female couples and surrogate motherhood for male couples.¹¹⁹

The politically motivated position of support for a heteronormative view of the family is problematic in several different regards. In addition to the central topos of child welfare, two further aspects need to be emphasized:

1. *The premises of reproductive medicine legislation:* The legal regulation of reproductive medicine aims at protecting people from abuses (Art. 119.1 Swiss Const.), at protecting human dignity, personal rights, and family when dealing with human genetic material and at ensuring that reproductive medicine be used to promote families (Art. 119.2 Swiss Const.).¹²⁰ The protective provisions make reference to two systems of norms: “human dignity” and “personal rights” belong to the ethical register with universal character, while the “family” involves the *sociocultural register* that reflects the social views and orientations of a specific situation at a particular time. This does not aim at universality but at the adoption and adaptation of historical contingency.¹²¹ Mixing the registers promotes two problematic assumptions: 1. There are social conditions in which the principles of “human dignity”, “personal rights”, and

“child welfare” are fundamentally and exclusively protected and there are those in which these principles are substantially endangered. 2. Within this context, the ban on reproductive medical procedures for same-sex couples and individuals leaves the impression that its aim is not to protect against abusive applications, but to reject abusive *wishes*.¹²²

2. *The distinction between medical infertility and the social inability to reproduce:* There is no doubt that the infertility of same-sex couples also exists independently of medical causes. In contrast with medical infertility, which can apply to all couples, one can therefore speak of “*social infertility*”¹²³ in the case of same-sex couples. The latter does not relate to the *health and physical constitution of the persons involved*, but primarily to the gender configuration of the couple. But what is this legally relevant distinction based on? The following applies within the context of reproductive medicine treatment: 1. Same-sex and opposite-sex couples cannot conceive and give birth in a “natural” way. 2. Same-sex and opposite-sex couples can, however, become parents with the help of reproductive medicine procedures. From the perspective of reproductive medicine, the initial conditions (medically resolvable obstacles to conception) are the same here in both cases, as are the goals (a child) and the scope of success (the family-promoting effect required by the legislation). The point of view of reproductive medicine does not confirm the categorical differences that the legislation has assumed with regard to assisted reproduction.

3.5.2 Sperm and egg cell donations

Sperm or egg donations are essential for same-sex couples to become parents. Same-sex female couples require sperm from a third party, while same-sex male couples require egg donation and either a surrogate mother or – until now extremely rarely – a uterus transplantation.¹²⁴ The introduction of homologous insemination (sperm donation by the partner), which has been used since the middle of the 19th century, historically marked the beginning of the reproductive decoupling of sexuality and reproduction. The simplest procedure is intrauterine insemination (IUI), in which the semen is introduced directly into the uterus so that the fertilization of the egg cell takes place inside the body (*in vivo*). For more severe forms of infertility, the procedure is performed outside the body (*in vitro*), either by bringing the sperm and egg together in a test tube (IVF) or by transferring sperm directly into the egg

(ICSI). Egg cell donation, on the other hand, is a much more recent development, leading to the first child being born in 1984. A medically reliable procedure for extracting egg cells (follicular puncture) has only been available since the 1980s. In contrast with sperm donation, egg donation requires a stressful procedure associated with health risks, including hormonal stimulation treatment and the invasive egg cell extraction.

While sperm donation will soon be made available to same-sex female couples, it will remain prohibited for single women, as is egg cell donation for same-sex male couples and individuals. The resulting unequal treatment between married women and men is controversial. The legislation has justified it in that only access to legal sperm donation is being expanded, while egg donation and surrogate motherhood remain generally prohibited. This has two consequences: 1. The abolition of unequal treatment between opposite-sex and same-sex couples will lead to a new inequality between same-sex couples. 2. Instead of bringing about equal conditions for making parenthood possible, there will only be a formal harmonization of the existing heteronormatively oriented legislation.

3.5.3 Divided fatherhood

The defensive nature of the legislation is based less on considerations concerning reproductive medicine than those involving paternity itself. This is all anchored in the complementary principle derived from Roman law: *Mater semper certa est* (the mother is always certain) and *Pater est, quem nuptiae demonstrant* (the father is whoever the marriage identifies as such). The mother is thus the woman who gave birth to the child (cf. Art. 252.1 Swiss Civil Code), and the father is the husband of the mother of the children born in marriage (cf. Art. 255.1 Civil Code), as long as the paternity is not refuted in court (cf. Art. 256ff. Civil Code).¹²⁵ Heterologous sperm donation is compatible in terms of parentage because it is “regarded, so to speak, as culturally authorized, artificial infidelity”,¹²⁶ in which the deviating genetic paternity leaves the legal status of social paternity unchanged, as the Federal Council argued in its 1996 statement: “The division in paternity between a genetic and a social-legal father through insemination using donor sperm has, in contrast with egg donation, a parallel in natural procreation processes: That the genetic father does not legally assume responsibility for his child and that, in particular, the husband of the woman giving birth does not necessarily have to be the biological father is a matter of experience.”¹²⁷

3.5.4 Divided motherhood

Egg cell donations are, by contrast, prohibited because they lead to a division of genetic and biological motherhood.¹²⁸ “Although there have always been children who have had a biological mother and a social mother who were not identical, the division between biological and genetic motherhood is an invention of reproductive medicine.”¹²⁹ Because the *genetic mother* (egg donor) is not identical to the *biological mother* (mother giving birth), there is no genetic mother-child relationship. Since the law only takes the birth into consideration when defining the mother, the origin of the egg cell from which the child is born is just as irrelevant to the legal recognition of the mother as is the origin of the sperm to the legal recognition of the father. Nevertheless, divided motherhood is judged completely differently from divided paternity: the genetic relationship of the child to the female egg cell donor – again with a view to the child’s welfare – is given greater weight than the relationship of the child to the male sperm donor. In contrast to sperm donation, egg cell donation requires a complex, often physically demanding procedure. Medically controlled, medicinal hormone stimulation is necessary for the maturation of the egg cells. The egg cells are then removed transvaginally under narcosis at the appropriate time.

Even more problematic is the mother-child relationship in surrogate motherhood – which constitutes the opposite of egg cell donation. “A surrogate mother [is] a woman who is willing to conceive a child through a reproductive process, carry it to term and leave it to third parties permanently after the birth” (Art. 2[k] RMA). As in the case of wet nurses, the practice reaches back far into cultural history, and it has now been gaining increased recognition in the United States since the 1980s.¹³⁰ In the case of surrogate motherhood, the genetic and biological mothers also differ, but – in for opposite-sex couples – in such a way that the intended mother is in fact the social and usually the genetic mother, while not the biological mother. The principle of *mater semper certa est* is taken *ad absurdum* by the surrogate mother: while she, on the one hand, fulfills the legal conditions for motherhood insofar as she gives birth to a child, it is, on the other hand, clear from the outset that she neither wishes for the child to be hers nor does she wish to be the child’s mother. “Not only does a surrogate mother, in most cases, give birth to a child who is not genetically hers, but she has no intention of taking on the role of a mother after birth. She instead intends to hand over the child after the birth, with whom she has had an intimate physical connection for nine months, to the people who gave occasion to the child’s conception.”¹³¹

If the egg cell derives neither from the intended mother nor from the surrogate mother herself, a perplexing three-fold maternity constellation of genetic, biological, and social mother can arise, which many view as a threat to child welfare. Three “discursive constructs” of surrogate motherhood can thus be distinguished:¹³² 1. the *instrumentalized* woman, for whom the “severing of the bond between the birth mother and child [...] violates the human dignity of the woman and the right to family life of mother and child”; 2. the *altruistic helper* who donates her pregnancy, as the French expression *don de gestation* would suggest; and 3. the *reproductive service provider* who, following contractual logic, “exchanges pregnancy and childbirth for monetary compensation”. In legal systems that reject surrogate motherhood, the focus is not on the danger of its instrumentalization, but on a concern for maintaining the natural order. When the acknowledgment of the parenthood of a genetic parent is in question, one natural parenthood can be substituted for another and order is thus restored”.¹³³

Swiss reproductive medicine legislation continues to follow the Federal Council’s 1996 guideline “that medically assisted reproduction should not result in family relationships that deviate from what is otherwise naturally possible.”¹³⁴ In its 2013 report on surrogacy, the Federal Council confirmed: “All reproductive medical procedures that respect the principle of *mater semper certa est* are permissible.”¹³⁵ This assertion is incorrect as the legislation bases the refusal of access to reproductive medical measures on the criterion of *either* biological or genetic motherhood: In the case of surrogate motherhood, the division of biological and social motherhood is used to justify its prohibition, whereas in the case of egg cell donation, the identity of biological and social motherhood is unaffected, while genetic motherhood is.

Genetic origin undoubtedly plays an important role and is gaining relevance in a world in which the genetic and social identity of the mother and father can be taken less and less for granted. However, the lessening of the certainty of origin makes the Federal Council’s relativization of genetic paternity seem questionable¹³⁶ rather than supporting its strong emphasis on genetic motherhood. Taking into account the right of every child to know of his or her descent, as is enshrined in the UN Convention on the Rights of the Child and in many legal systems, the restrictive Swiss legislation even has a counterproductive effect on child welfare, as many couples are forced to travel abroad for reproductive medicine treatments, where due to anonymity or a lack of data collection, the future children’s right to this infor-

mation is not taken into account.¹³⁷ Moreover, even the Federal Council has expressed concern regarding the legal consequences of the ban on surrogate motherhood: “A child is not to blame for being born by a surrogate mother. It is not fitting to prioritize the legal system to the detriment of the child when this does not appear necessary.”¹³⁸

4 The legal and ethical significance of child welfare

4.1 Children and their welfare

In the Bible, children are not only an expression of God’s blessing and a guarantor for the continued existence of family, clan, and people, but are also encountered in a figurative sense as an expression of particularly close and intimate faithful relationships. The category of covenant, which is central to Reformed theology, is also symbolized as a father-child relationship. While the Bible speaks of the family relationships of its time and not of child ethics in the modern sense, the texts document a richness of meaning with regard to childhood that far exceeds many current discussions.

“Truly I tell you, unless you change and become like children, you will never enter the kingdom of heaven. Whoever becomes humble like this child is the greatest in the kingdom of heaven.” (Matt. 18:3-4) This did not involve bioethics at the time, but Jesus’ words also provide a perspective on current issues of parenting, family, and reproductive medicine. Seeing the world through children’s eyes means questioning adults’ decisions and actions in terms of their significance and consequences for the children. We no longer consider children to be the “least” among us, but they are indeed the weakest when their coming into the world becomes a medical project of parental preferences and choices.

Children not only establish the family, guarantee its continued existence and represent the aim of parental desire, but also serve as a metaphor and a projection screen for the covenant relationship between God and humankind and for fundamental ideas on human interconnectedness. Ernst Bloch’s understanding of “homeland” as “something which shines into the childhood of all and in which no one has yet been” seems to allude to the same idea.¹³⁹ Secularized hope forms a counterpart to the biblical motif of being children of God: Children are a gift from God (Ps. 127:3), childlessness can signify God’s punishment (Hos. 9:11f.). Children are seen as “immature” and “unfinished”, facing God with

open and empty hands (Mark 10:13-16). They are thus a model for those who accept the kingdom of God “like a child” (Mark 10:15). God is father and teacher (Ps. 103:13; Prov. 3:12) and Christians are God’s children and heirs (Gal. 4:7; 1 John 3:1), co-heirs with Christ (Rom. 8:17), and sisters and brothers in Christ (Rom 9:4) who address God as “Abba, Father” (Rom. 8:15). God is incarnated in Christ as a defenseless child.¹⁴⁰ Jesus is the child “filled with wisdom”, upon whom “God’s grace” rests (Luke 2:40), and who allows his parents to search for him for three days while he is holding discussions with the teachers in the temple, and then brusquely rejects any concerns of his parents (Luke 2:41-51).

From an ethical point of view, the image of the child transports two fundamental normative ideas: the intrinsic attitude of motherly/fatherly love as unconditional devotion to the other person and paternalism/maternalism as a hierarchical relationship of care and responsibility. Both relations stand for the basic dialectical tension between human dependency and autonomy. Relatively new to the context of ecological debates is the perspective of the life prospects of children and their future children, etc. (responsibility for the future). Children’s rights, in a certain manner, emphasize developmental opportunities not only for present but also for future generations. The parent-child constellation now forms a sort of paradigm for the ethical orientation of future-oriented action on a planetary scale.

When we speak of children with regard to reproductive medicine, psychology, or education, this resonates with metaphorical references to positive relationships with the world and with God. Parent-child relationships are prototypical for a relationship with the world that can be viewed as the original ability to resonate: We may think of love relationships or “parent-child relationships as relationships that enable mutual development. And the desire for resonance certainly increases.”¹⁴¹ The biblical-theological perspective places current discussions about childhood and parenthood into the context of fundamental concepts of successful living and life-enhancing community.

At first glance, the report by Kim Bergman, founder of the surrogate mother agency “Growing Generations” in Los Angeles, can seem sobering: The development of each child is based on four factors: a sperm, an egg, a uterus, and a home. The first three factors can be provided by anyone. It is only the home that sets parents and families apart.¹⁴² The call for the relativization of the “technical” aspects of reproduction in favor of the

parent-child relationship stands in opposition to the tendency to absolutize the topoi of reproductive medicine – sperm and egg, embryo, genetic information, technical procedures, and pre-implantation and pre-natal decisions. They then stand for life, people, the world, or the normative order itself. Their normative placeholder function is reflected in the use of the category of human dignity. In the context of reproductive medicine, this is encountered within the framework of two separately discussed concepts: the reproductive autonomy of *potential* parents and the welfare of *potential* children.

The concept of child welfare, within the context of reproductive medicine, is complex and multifaceted:

1. Child welfare cannot be defined positively in definite terms: in analogy to the concept of human dignity, it indeed develops its meaning in a conceptual vagueness and indefiniteness.
2. The criteriological use of the term slightly blurs its point of reference, the affective practice of parent-child relationships, which cannot be put into clear-cut theoretical terms in their complex entirety.
3. Child welfare connects normative behavior and relational expectations: It is not fully based on a moral virtue or an ethical principle, but includes all aspects, dimensions, and spheres that allow children to exist and thrive in their parental relationships and familial, social, economic, political, and cultural environments.
4. The distinction between observational and participational perspectives: Child welfare provides a benchmark from an observational perspective (objective dimension) that neither corresponds nor suffices from the participational perspective of parents, family, relatives and friends (relational dimension).
5. The discourse on child welfare with regard to reproductive medicine does not aim at what children are entitled to as they do not (yet) exist, but at who is entitled to a child.
6. The groundlessness of parental love and care and the need to justify child welfare: although child welfare offers a perspective on parental love and care, it does not provide the grounds for the specific parent-child relationship.

4.2 Concept and function of child welfare

The concept of child welfare in its current usage is based on the UN Convention on the Rights of the Child (UNCRC), which was adopted in 1989 and ratified by Switzerland in 1997.¹⁴³ This stresses in Article 3 of the document: “In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.”¹⁴⁴ These include the right to

development (Art. 6), *identity* (Art. 8), *living with their parents* (Art. 9), *the child's own wishes* (Article 12), *protection of privacy* (Art. 16), *protection from violence and neglect* (Art. 19), and the *right to education and schooling* (Art. 29).¹⁴⁵ Analogous to fundamental human rights, children's rights include "protection, provision, and participation".¹⁴⁶ The UN Committee on the Rights of the Child considers the best interests of the child to be the state in which children can best realize their lives and develop under the protection of state-enforced children's rights.¹⁴⁷ The rights and general principles help identify the circumstances that will best serve children in their particular situations. "Important components in determining the best interests of the child involve the inclusion of children's wishes and will, respect for their individuality, and observance of their fundamental rights, as set forth in the Convention on the Rights of the Child."¹⁴⁸

In contrast with older conceptions, which emphasized the particular vulnerability of the child, the convention consistently focuses on the individual needs of the child and not on "the interests of their families or the political community. For children, as for adults, it is not only the fulfillment of their needs that contributes to their well-being, but also their striving for them, provided that they seem reasonably promising."¹⁴⁹ Parents and those in their care should therefore base their behavior and interactions "on the personality of the children, recognizing and promoting their talents and strengths, and not primarily aligning the goals of their upbringing with their own preferences, without considering the children's own identity. The children must always be perceived and brought up for their own subjective sake, and not as an object of parental desires."¹⁵⁰

Because the children of today will be the adults of tomorrow, concepts of child welfare face two particular challenges: For one thing, the younger the children, the less their interests correspond with the interests they will have as adults, while on the other hand, decisions affecting children are usually not made by the children themselves but by their parents or guardians.¹⁵¹ The tendency of modern concepts of autonomy to prominently attach personality to cognitive-rational abilities leads to childhood and adolescence being viewed more or less as transitional stages towards a future self-determined person. They appear as imperfect or deficient phases compared with adulthood and at most have an educational benefit for later adult life. On the other hand, as early as 1929, the Polish pediatrician and educator Janusz Korczak demanded and argued for children's right to their "now": "For the sake of the future, one looks

down upon what now makes [children] happy, sad, amazed, angry, or interested. Children are cheated of many years of their lives for a tomorrow that they neither understand nor need to understand."¹⁵²

The dynamic relationship between the present dimension of childhood and adolescence and the dimension of their development establishes the right of children to an open future. The complementary perspectives of *freedom for today* and this *open future* reflect the ethically challenging tension between children's *subjective* will, which is deserving of respect, and the *objective best interest* of the child, as determined from a third-party perspective of responsibility.¹⁵³ A child's present expression of will can and often does contradict what (adult) third parties view to be their best interests. It is assumed here that their well-being would indeed correspond with the presumed will of the children if they were able to weigh choices responsibly and rationally.

But how can parents conform to their child's future will? Since that particular point of view cannot be determined objectively, "a normative vacuum arises that can be prematurely filled with individual or culturally inherited notions of *normality*. For example, a very specific way of life – often based on the experiences of one's own childhood – can be assumed to be the only acceptable standard."¹⁵⁴ Joel Feinberg has therefore argued negatively that the exercise of parents' rights-in-trust over their children must be directed so as not to compromise the "autonomy of the future adult".¹⁵⁵ The child's freedom is derived from the freedom that the law guarantees as a future self-determined person: "It is the adult he is to become who must exercise the choice, more exactly, the adult he will become if his basic options are kept open and his growth kept 'natural' or unforced."¹⁵⁶

4.3 Child welfare in reproductive medicine

In its 1996 statement, the Swiss Federal Council justified the procreation bans stipulated in the Reproductive Medicine Act with the basic idea that "medically assisted reproduction should not lead to family relationships that deviate from what is otherwise *naturally* possible".¹⁵⁷ As a public interest in the protection of things natural would be highly questionable in itself, the legislation has underpinned its concern with child welfare instead: "In contrast with natural conception, third parties are involved in the procedures of medically assisted reproduction, who need to justify their actions with a view to child welfare. From this standpoint, the interests

and wishes of the couple to be treated need to take second place to the well-being of the child.”¹⁵⁸ For the Federal Council, protecting child welfare is a “well-founded public interest of our society”.¹⁵⁹ This is not only directed against possible impairments “caused by the act of procreation itself or by the type of method used”, but also aims at “the best possible living conditions” for the resulting children.¹⁶⁰

Therefore, from the point of view of the legislator, “the conception of children should be avoided when care and education would not likely be adequately provided for them”.¹⁶¹ Restrictions regarding the age, personal circumstances, and relationship status of the intended parents, the ban on access to reproductive medicine for single people, the ban on egg donation and surrogacy, and the ban on the use of germ cells from deceased persons are justified by undesirable psycho-social consequences for the child. The physical well-being of the child (health) is central to the prohibition of the use of germ cells from close relatives (impediment to marriage).¹⁶²

The legislative reasoning founded in child welfare raises three methodological questions in the run-up to the ethical discussion: 1. Who is being addressed when it comes to child welfare? 2. How do the best interests of the child relate to the nature of reproduction? 3. Is a person whose existence is made possible by this act of reproduction negatively affected by the biologically and socially described gender situation of his or her legal guardians?

4.3.1 *The welfare of potential future children*

In terms of child welfare, the tension between the child’s present and adult future takes a new turn within the context of reproduction. This involves the consideration of the welfare of children yet to be conceived or born. Their non-existence has two aspects: they exist neither as children, who turn women into mothers, men into fathers, and couples into parents, nor as legal subjects in the sense of bearers of fundamental rights. Unborn life is categorically distinguished by the law – even if various stages of development are taken into account – from the born, who attain the status of personhood. “The protection of unborn life under general human rights law on the international plane is very thin, a protection of the embryo in vitro, in particular, non-existent. The embryo in vitro is covered neither by the right to life nor by a potential legal guarantee of human dignity.”¹⁶³ As there is no legally constitutive connection

between born children (as bearers of fundamental rights) and prenatal child welfare, prenatal existence is not a matter covered by the UN Convention on the Rights of the Child.

Child welfare is, as a principle of protection, aimed at the child’s own individual legal personhood. “The individual welfare of children takes on clear contours when connected to the specific living conditions and actual experiences of children and their individual needs of protection.”¹⁶⁴ Since children only appear as possible future persons in the legal regulation of reproductive medicine, child welfare is not related to specific lives there, but to general living conditions that every future child should be able to enjoy. The legislation regulates these standards via access criteria for reproductive medical measures. It does not address the *conditions for parenting success* with a view to child welfare, but child welfare as a *condition* for making parenthood possible. A child that is desired today may only be conceived and born with medical assistance if its future parents meet certain conditions that are asserted to be essential to the child’s well-being. Access to reproductive medicine is otherwise to be denied.¹⁶⁵ This legal logic has a paradoxical consequence: the legislation does not protect the welfare of the child to be (as it does not yet exist), but that of the future child before its birth. The well-being of the child is thus protected by preventing the child from existing in the first place.¹⁶⁶ This consequence contradicts fundamental ethical principles and moral intuitions, in which the value of life can neither be determined objectively nor made into a criterion for the decision of the existence or non-existence of a person.¹⁶⁷

Two objections can be raised against this criticism: 1. It does not prevent children, but only the realization of the *wish* to have children. 2. In connection with other topics – such as environmental and climate policy and intergenerational justice – damages to hypothetical, future people are evaluated and forecast with legal relevance as a matter of course.¹⁶⁸ This first objection shifts the perspective from that of the child to that of the parents and serves the common intuition that not every wish can come true. The terminology belies the fact that the desire to have children is not a spontaneous appeal to the contingency of the world, but is formulated with a view to real possibilities and a basic personal right. An unfulfilled wish is something completely different than a denied legal right. In contrast with the right, wishes cannot be legally remedied and sanctioned. The second objection to the “legal-ethical consideration of future generations”¹⁶⁹ actually supports the other side of the

matter as all environmental restrictions to people living today, as a means of protecting future generations, can only be made plausible under the normative premise that people *should* exist in the future. One could otherwise argue, with good reason, for the banning of human reproduction instead of a climate policy that restricts people's freedom today, in order to not have to take any adverse life conditions of future generations into account. The idea of taking future people into consideration necessarily presupposes their existence.

4.3.2 *The nature of reproduction and child welfare*

The Reproductive Medicine Act follows a bionormative paradigm in two regards:¹⁷⁰ "As provided by nature, every child has a mother and a father. [...] These basic conditions of human existence are also to be observed when using medically assisted reproduction."¹⁷¹ A "nature" of *legal* – and not biological! – parenthood is thus derived here from the "nature" of reproduction. Nature becomes a criterion for the legislator: What is not possible "naturally" should not be made possible using reproductive medicine.

The natural argument is deeply rooted in culture, originally in the religious distinction between the created and the *manufactured*.¹⁷² The expression "nature" (from Lat. *nasci* = "to be born, to arise, to develop") describes "that which, in our world, was not made by human beings".¹⁷³ The Stoa already postulated the moral requirement, *naturam sequi*, living in accordance with nature.¹⁷⁴ What lies behind this is the ontological idea in natural law of a (moral) *imperative* lying in (natural) *being* as an ethical goal (*telos*) or intrinsic value (*eudaimonia*). The ontological view involves the assertion that "nature did not intend" parenthood for same-sex couples. From a late-modern, secular perspective, as well, there is a tendency to "prefer the natural over the artificial":¹⁷⁵ "Nothing makes us happier than what we receive from the hands of others without our own doing. The greater the share of personal foresight, planning, and control in what we receive as a gift, the less it is in fact a gift and the lesser the joy of the recipient. The element of surprise constitutes another moment of joy in that which we do not choose ourselves."¹⁷⁶

The significance and scope of the *preference for naturalness* is reflected in talk of "natural death" and "natural birth". The wish for a natural death does not include enduring the pain and agony caused by the natural growth of a tumor. And the desire for a natural birth does

not exclude medical intervention if the life and health of mother and child are threatened during the process. On the contrary: "technology in general and medicine in particular has the function of combating diseases, protecting against hostile natural phenomena or improving living conditions, in short, freeing oneself from the conditions of chemo-physical nature, when these hinder the development of human values."¹⁷⁷ In medicine, it has been shown "that the distinction between nature and the unnatural is highly mobile and variable, dependent on intellectual and moral trends, but nevertheless especially attractive for the creation of strong moral judgments". The natural is *desirable* not because it derives from nature, but because as it is *morally good* and desirable.

The distinction between naturalness as a desirable preference and as a categorical principle reflects the old dispute between understanding of creation as a *medium* and as a *message*.¹⁷⁸ If God describes himself in the "book of nature" and if human beings are able to read it, nature itself is then the divine message revealed in nature. Everything so recognized as nature is then identical with the being and will of God. If nature is, on the other hand, "the medial substrate through which God himself speaks", then "God 'says' something (not everything) with something (not everything), nature being strictly the medium but not the message".¹⁷⁹ Everything that is recognized in nature then has to be explored as a possible expression of the being and will of God, whereby nature itself cannot represent the test criterion. The categorical interpretation – analogous to natural death and natural birth – pokes right into the middle of the wasp's nest that is the problem of theodicy. Because all natural phenomena, from pandemics to earthquakes to every personal bodily fate, are directly "copied into God"¹⁸⁰ and the "groaning of creation" (Rom 8:18-22) would be nothing other than the rebellion of creation against the creator.

By declaring the natural to be the legally binding norm, the legislation asserts a *principle of naturalness* that goes a crucial step beyond a *preference for naturalness*. There are two problems with this. Firstly, an intrinsic value of nature is assumed, in that a moral *imperative* is directly inferred from a natural *being*. "If a norm is derived directly from a fact, this results in a fallacy (naturalistic paralogism) as it does not explain what moral values are taken into account when nature is followed."¹⁸¹ The obligation to die "naturally" would thus, for example, also be followed by the obligation to endure any "natural" pain. Secondly, medical action essentially consists of strategies of interrupting, manipulating, or replacing

natural processes. Reproductive medical measures are always only used when natural reproduction is unsuccessful or impossible. "Artificial reproduction in itself is 'unnatural', so that the dichotomy of naturalness and unnaturalness seems paradoxical and inappropriate in this context. Consequently, the objections raised out of respect for the natural process of procreation should be directed against all possibilities of eliminating infertility."¹⁸²

The objection to the paradox of unnaturalness is that the goal of "creating a 'natural' state" among opposite-sex couples cannot be compared with the goal of overcoming "natural reproductive obstacles".¹⁸³ The objection understands "nature" or "naturalness" not *descriptively* (as observable natural phenomena) or *ontologically* (essence, purposes, goals of nature), but *evaluatively* (value of nature). If the natural refers to "what is usually desired, what is considered healthy and correct" or "the familiar, self-evident, normal",¹⁸⁴ the paradox dissolves: "Reproductive medicine could constitute the 'natural' in the sense of the 'existing' and, in specific cases, work to fight the 'unhealthy' and aim for the 'natural' in the sense of what is 'healthy'".¹⁸⁵ In accordance with this understanding, social infertility is not a disease since there is no physical state of health in which infertility is overcome. The argument demonstrates the precariousness of value judgments that refer to "nature" or "the natural". The distinction does not work with the usual healthy-unhealthy dichotomy, but with the binary coding of "normal" (healthy = fertile) vs. "abnormal" (healthy = infertile) and derives from this a criterion for the worthiness of reproductive medicine treatment: infertility as a pathological deviation from natural fertility should be treated in terms of reproductive medicine, in contrast to infertility as a social deviation from social normality. Infertility as a pathological deviation from natural fertility is to be treated here using reproductive medicine, in contrast to infertility as a social deviation from social normality.

4.4 Child welfare as a differential social criterion?

The heteronormative privilege of assisted reproduction occurs with reference to child welfare, which in turn is derived from the "natural" gender and reproductive duality. A "concern for preserving a traditional, bourgeois family image" lies unmistakably behind the concern "for the well-being of the future child".¹⁸⁶ The focus on reproductive medicine means that the topics of marriage, parenthood, and family are applied in their extreme to reproductive issues, in which child welfare appears as a mere "foreign object". There has been, moreover, a

wealth of political, sociological, and socio-psychological discourses on same-sex parenthood and child welfare. Most of the relevant studies come to the conclusion that children of same-sex couples do not suffer any significant developmental disadvantages. "In terms of the criteria of gender identity, sexual orientation, gender role behavior, and stigmatization, the children raised by parents of the same sex do not differ from other children".¹⁸⁷ However, both the results of the study as well as the design and methodology of the study have been hotly debated.

The relevant studies do not take place under laboratory conditions, but in a reality in which a minority of same-sex couples and families is met with a majority of opposite-sex couples and families with different opinions and beliefs. The child-welfare perspective in concrete parent-child relationships is strongly influenced by the heteronormative social environment. The difficult relationship between behavioral and relational perspectives provides fuel for three frequent prejudices:¹⁸⁸ 1. Same-sex parenting is a disadvantage for children; 2. The children of same-sex parents are marginalized and stigmatized by their peers; 3. the comparatively greater psychological problems of same-sex parents burden the well-being of their children. The first two hypotheses suggest an ambiguous causality. A closer look reveals that while the parents' sexual orientation can be the reason for children being disadvantaged, the reasons do not however lie "in the parent's homosexuality but in the reactions of the social milieu".¹⁸⁹ The third hypothesis must also be judged within the context of the social environment, just as the finding that "children in same-sex families see their doctors more than twice as often due to psychological/emotional problems [...] and ADHD is also twice as common in such children."¹⁹⁰

One possible explanation for the finding could also be that these "parents are simply more caring and concerned about their children and therefore bring them to doctors more often than the average parent".¹⁹¹ The question of whether the three hypotheses say anything about parent-child behavior or about the social conditions in which parent-child interaction is embedded points to the notorious ambivalence of the child welfare argument. Paradoxically, in intolerant societies, it serves to further intensify intolerance, as the endangerment of the child welfare leads to the suggestion to renounce parenthood.

The matter-of-factness with which child welfare is now being discussed has completely ignored the question of the relevance of parental sexual orientation to the topic.

Why are new studies continually being conducted when “there is no evidence to date that this variable has any impact on the ability to be a parent?”¹⁹² The question is all the more pressing as other characteristics do in fact have a proven effect on child welfare. Positive factors include, for example, the strong desire to have children, positive, supportive relationships, and parental income. The spurious nature of examining the sexual orientation of (potential) parents with regard to (feared) negative effects on the well-being of the child becomes readily apparent when other criteria are compared. It is well known that low family income has a long-term negative impact on educational opportunities, socio-emotional development, and the mental and physical health of children. Studies likewise show that people who were abused as children are at a high risk of abusing their own children as well.¹⁹³ Although these links are known and well researched, neither the legislator nor the medical world would think of excluding such people from reproduction as this would massively violate the fundamental human rights and freedoms of the persons concerned.

From the point of view of legal ethics, the connection between parental sexual orientation and child welfare is notoriously vulnerable to discrimination and abuse. This also applies to the “unrealistic stigmatization of non-marital partnerships as endangering child welfare” in the Reproductive Medicine Act. It “remains stuck in the institutional thinking of the 19th century, closing itself off from changes in family realities, and is an expression of the unusual persistence of the normative model of a natural unity of biological and social parenthood, which is viewed as attaining its inseparable fulfillment in marriage.”¹⁹⁴

In sum, we can establish, with regard to child welfare as a criterion for the regulation of access to medically assisted reproduction: 1. The legal category of the best interests of the child presupposes that a born child is the bearer of fundamental rights. 2. In the context of reproductive medicine, child welfare can only have a prospective function, as it is not any specific well-being that is at issue here, but at most the conditions for the possible well-being of a future child. 3. The heteronormative view on child welfare in the Swiss Federal Act on Medically Assisted Reproduction is based on the unfounded and conceptually-categorically inadmissible transfer of biological prerequisites and assumptions of naturalness to social conditions. 4. In the context of reproductive medicine, the best interests of the child can only function as a negative criterion used to determine what a future child should under no circumstances be expected to face in life.

5 Contours of a theological-ethical perspective on parenthood and children

5.1 Parenthood between desires and risks

The dialectic of desire manifests doubly when it comes to the wish to have children: “The desire for procreation includes both freedom and a great lack thereof, since the procreators commit themselves – as parents – to lifelong responsibility and the offspring – as daughters or sons – to a lifelong bond. Parents morally compensate for this radical form of subjugation, involving both a physical and social destiny, through a high degree of human attention and responsibility. In the desire to have children, the dialectic of the desire is reflected in the hiddenness of the beginning of birth.”¹⁹⁵ The idea of the hiddenness of the beginning of birth adopts a concept of Hannah Arendt, who – following Augustine – understood every birth as a confirmation of the divine creation of humankind: It is “natality [...] through which every man appeared in the world as unique and new. Due to this uniqueness, provided by the fact of birth, it is as if God’s creative act is repeated and confirmed in each human being”. Through natality people are bereft of all predictability.¹⁹⁶ Birth, as creation, remains beyond the world as it is the precondition for human freedom “under the condition of natality”, as “the new beginning inherent in birth can make itself felt in the world only because the newcomer possesses the capacity of beginning something anew, that is, of acting.”¹⁹⁷ Arendt understands birth as a categorical incision in the world that radically separates the person born from everything that came before. This break must not be misunderstood as total freedom. On the contrary, the “dictate of birth”¹⁹⁸ consists in the “radical contingency and radical determinism”¹⁹⁹ of human existence. Natality refers to the “existential situation of the child between radical pre-determination and heteronomy on the one hand and radical openness on the other”.²⁰⁰ In legal categories, the *autonomy of the desire to have children* corresponds with a *heteronomy of parenthood*.

By contrast, medical and ethical discussions reconstruct human reproduction as a cascade of decisions and actions. The people who are granted a role here appear as active subjects. The reason for the desire to have children fades, as does the goal, the parent-child relationship. The consequences of a view sectoralized in this way can be seen in comparisons with biblical accounts: While in the stories of the patriarchs and matriarchs or that of the birth of Jesus, the phase between the announcement of offspring and their coming into the

world appears as a black box (in biblical terms: a “miracle”), the debates on reproduction fade out the actual plot of the story of the desire to have children and its fulfillment. They focus on the in-between space that appears irrelevant from a biblical point of view: Eve (Gen. 4:25) sees her “natural” pregnancy with Seth as a gift from God, just as the infertile Elizabeth (Luke 1:36) and the virgin Mary (Luke 1:31.34f.) view their pregnancies as spiritual gifts. It is not who (sexual partner) or what (sexual intercourse) *causes* the pregnancy (biologically) or how it *comes about* (sex with a partner, surrogacy) that counts, but only who (God) *grants* the child who emerges from the pregnancy or to whom it owes its existence. The biblical context can also be translated into secular language: “Because the most important element of parenthood, love and affection for the child, does not arise from a biological relationship, but through a personal commitment to a specific living being.”²⁰¹ In the ecclesiastical-theological debates, on the other hand, there is a seeming contradiction: Following the same biologic, according to which a historical-critical liberalism declares the virgin birth to be an obsolete tenet from a biological point of view, a certain biological biblicism denies the human miracle of creation of birth and narrows human reproduction to a moral norm of action. This raises the question of the justification for the creator God to deny access to reproductive medicine institutions and why the evident idea of God’s presence in such a reproductive center should seem so absurd or impossible to the church and theology.

A medical-biological focus and a moral perspective reflect little understanding of reproduction as an *event*. Criticism based on biblical testimonies must not be misunderstood as ethical legitimation. The miracle of procreation, pregnancy, and childbirth that the people of the Bible witness cannot be medically or ethically captured and simulated. The hidden nature of reproduction is and remains the incommensurable factor in the desire to have children and its realization, in conception and birth. From a biblical point of view, this is not a biological reservation or verdict, but a characteristic of creation, which the creator does not leave to its own devices. Parents are not contradicting themselves when they thank both God and their reproductive medicine specialist for the birth of their child. What is important, however, is who is thanked for what.

The focus here is not the assessment of reproductive medical procedures and decisions. These considerations center on the development of the biblical-theological perspective on reproductive medical assistance. Within the biblical-theological horizon, procrea-

tion shares with the concept of desire an openness that relies on *expectation* and not on *fulfillment*. What is expected is God’s good action, that his will be done, which *can* be realized in the fulfillment of the desire to have children, but *does not have to be*. There is no theological, moral, or medicinal cure for the tragedy of creaturely life, as the gift may fail to materialize or might consist of something entirely unexpected.

5.2 The family between genes and stories

The model of the nuclear family, established in the second half of the 18th century and consisting of father, mother, and legitimate children emerged from a “slow process of intimatization that extended across many centuries”.²⁰² The mother took the place of the “father of the house”, while the wet nurse and stepmother, who had previously been integrated into the family more or less as a matter of course, would become a threatening “alien body within the blood-related nuclear family”.²⁰³ The idea of the homogeneity of blood ties corresponds with the family hermeticism of inclusion and exclusion. The fact that at that time women, as mothers, rose to become integrational members of the family, while at the same time women would also become a massive threat as mothers-in-law and wet nurses, is reflected today in the emphasis on biological and genetic motherhood and the rejection of surrogate motherhood. “In the debates over same-sex marriage and reproductive medicine, not only the gender order but also the concept of blood relationship, upon which rests an understanding of origin and connection to other people that has grown over the centuries, has come under scrutiny.”²⁰⁴ The attractiveness of biological and genetic explanations and subsequent interpretations follows the logic of a scientific-empirical worldview.

The modern model of the nuclear family is based on a hybrid concept of kinship made up of “blood and ink”:²⁰⁵ The biological mother is *mater certa* by dint of her biological-physical link, and the father is *pater incertus* through a *signed contract*. Until the introduction of the genetic paternity test in the 1980s, paternity was a purely legal construction that was/had to be supported by the patrilineal model of descent. The Roman-Christian patrilineal concept stands in conspicuous contrast with the matrilineal model of post-exilic Judaism. According to the rabbinical definition, “a Jew is anyone whose mother is Jewish”.²⁰⁶ At the same time, Old Testament patrilinearity often continues on as well (bilinearity). From a cul-

tural-historical point of view: blood is thicker than water, but the word is more powerful than blood.²⁰⁷ Reproductive medicine runs counter to both concepts of parentage: egg cell donation and surrogate motherhood eliminate the certainty of genetic-biological motherhood (through blood)²⁰⁸ while the genetic paternity test eliminates the uncertainty of paternity (through the word) and thus the inevitability of the construct of contractual paternity.²⁰⁹ “The technologies of assisted conception change the traditional family and kinship order in a fundamental manner. They replace the model of the father as the biological progenitor and the mother as the bearer of the child, intrude upon the code of family intimacy, bring about a duplication of functions and new, often conflictual configurations that are unforeseen in the concept of the middle-class nuclear family. It is natural to conclude from this development that there is a deep crisis concerning the family, which seems to be losing its two basic characteristics: its cohesion and its naturalness.”²¹⁰

In the biblical creation narrative, the human being *’ādām* (human, humanity) – as derived from the root *dām* (“to be red, soil, blood, life”) – is created through God’s word (Gen. 1:26) as flesh and *blood* (Isa. 58:7).²¹¹ The (spoken) word thus brings about blood/life. The connection between blood/life and the word presupposes a three-dimensional concept of life: 1. the *objective* biological life observed and described by biology and the subject of medical action; 2. the *subjective* biographical life in which a human being is embedded within a complex horizontal and vertical network of relationships; 3. And created life as a *whole*, which consists in the participation of every creature in the life of the creator. As “one and the same thing that is present in the diversity of life” it marks “God’s hidden presence in the life of his creatures”.²¹² Theological ethics addresses the aspects of human life beginning with this third dimension of life, which is a part of every person, even when the person is not in fact the subject. Every individual participates in this, without having power over it themselves. The Bible indeed speaks of human beings as creatures of divine creation. Every dimension of life is linked to the word in a specific way: biological life as *descriptions, definitions, and categorizations* of life (concepts of life, health, illness, etc.); the social biographical life in the form of *narratives and normative texts* (literature, morals, ethics, law), and the participatory life through the *received word*. Only the first dimension of life remains wordless (pain requires no definition in order to hurt). While the second dimension of life is essential, the third is completely provided or mediated by the word.

From a Judeo-Christian understanding, the story of God and his people takes on reality when it is told, interpreted in oral discussion and, in its incompleteness, repeatedly retold as it progresses through narration and the narrators.²¹³ In contrast to the written text, which confronts the person objectively, and with novels, which have endings, the story remains on the tongue and in the ear – and in the body like blood. The bodily relationship is still encountered in the Reformed understanding of scripture, which should actually be referred to as “understanding by listening” as it relies entirely on hearing the word of God. Since life, in all of its manifestations, is revealed to the people of the Bible through this word that is heard and discussed, life does not unfold for them in its modern biological form of naturalization. This applies as well to the concepts of “family” and “kinship”.²¹⁴ The relationship between clan and kinship groups was constituted – in modern terms – just as biologically and genetically (biological life) as it was socially (biographical life), mediated by the divine covenant promise (participatory life). The idea of the subordinate importance of social kinship compared to genetic-biological kinship first arises with the nuclear family, as based on intimacy and biology/genetics.

The narrative construction of kinship has undergone an impressive renaissance in our biotechnological society. “It is precisely the interruption of the line of descent that leads [...] to this gap being closed, with all the greater effort, through the symbolic legitimations of belonging. The productive narrative of family history – as opposed to a contingent, more or less deliberate biological event that set that story into motion – is intended to strengthen the bond between generations. [...] The most important symbolic act, however, which is intended to compensate for the lack of a genetic connection between the parents and their child based on the sexual act, is the writing and composition of life stories.”²¹⁵ In fundamental terms, the bridging of genetic and biological gaps through speech and writing to bring about familial and social continuity is a very old process. The biblical genealogies and the family trees of ruling dynasties have already made use of these media to ensure the continuity of the existence and organization of social associations.²¹⁶ The symbolic and narrative legitimacy of familial-social or power-political status can encompass all three of these life dimensions.²¹⁷

This differs from biographical life stories that are aimed at coherence and self-assurance of personal identity over time.²¹⁸ In a *life story*, two perspectives of identity are combined: *sameness* (Latin *idem* = “identical”, “similar”, as opposed to “different”, “changeable”) and

selfhood (Latin *ipse* = “identical with oneself”, as opposed to “different”, “alien”).²¹⁹ The difficulty of the concept of identity consists in the deeply culturally anchored idea of a core self that remains stable despite all inner changes, irritations, and (self-)doubts, and guarantees the coherence of this self despite all external developments, coincidences, and strokes of fate. This is also the aim of explanations that derive certain identity-characterizing behaviors and peculiarities from biological-genetic origins (“heredity”). “Inheritance: that is [...] like when somebody leaves me a house or you get it as a gift. [...] But it wasn’t a gift in the external sense, like when I give you a package and say, I’m giving you this watch and your son will inherit it from you, but these are inner matters, [...] these are qualities that we cannot influence.”²²⁰ The idea of a double determination through the past of the child’s inheritance and the future by dint of the parents as bequeathers is undermined with the divergence of genetic (biological), and social parenthood.²²¹ A genetic bond that brings about certainty and trust no longer exists.

At the age of 54, author Dani Shapiro found out through a spur-of-the-moment DNA test at ancestry.com that she was not in fact the biological daughter of her father, who had died two years earlier, but had been conceived through a sperm donation.²²² For the artificial insemination, the social father’s sperm was mixed with that of the donor, so that the parents were not certain of the paternity themselves. Growing up in a Jewish family with a close relationship to her social father, Dani Shapiro remembers her childhood: “There was always something that seemed strange to me, even as a child I stood in front of the mirror for minutes, not because I was in love with myself, but because I was searching for something. Now I know what it was.” When she found out the name of her genetic father, she watched a YouTube video of his: “That was my oh-my-God moment: Those were my gestures. I saw the familiar in a stranger.” She came to know the sperm donor and, looking back, sums it up: “Today I’d say that it was as if I saw my country of origin for the first time. [...] I felt very close to my roots. Now they were cut off. I felt as if I could float off into the sky like a balloon and pop.”

The author’s symbolically presented search for identity through the medium of narration allows the reader to become involved in a manner that is not and need not be supported by the author’s intentions. Significantly, the Jewish daughter describes her personal situation with a dislocation or localization metaphor that is firmly anchored in the Jewish self-understanding: a departure and a glimpse into the (“promised”) land (cf. Deut. 32:49)²²³

in contrast with the loss of home and subsequent homelessness (exile, diaspora):²²⁴ “Our identities are shaped by the stories that we are told from an early age about ourselves and our origins, and my identity was based on being my parents’ biological child. There was never a doubt about that. [...] I grew up in a religious household, from a cultural point of view, I feel Jewish through and through.” This was at odds with the confrontation with the history of her genetic father: “He showed me family photos on his cellphone – his parents, his grandparents, my ancestors. Protestant country doctors and lawyers who were culturally very far removed from my Jewish family.” From a contextualizing interpretive perspective, Shapiro offers a description of her biographical, familial, and genetic *diaspora*. The tension between homeland and foreign lands, assimilation and exile, which is deeply rooted in Jewish thought, is experienced by the writer at the affective-emotional level as a double betrayal: “At first I was in fact angry, I felt betrayed. After all, I feel we have a right to know as much as possible about our identity. [...] It felt like a betrayal to meet my biological father. My other father would not have wanted this encounter to happen. It would have shaken him.”

The conflict arising from the asymmetry of knowledge in the father-daughter relationship underlines the right of children to transparent knowledge about their origins. Every child must be permitted to know if they wish to know. However, no legal or moral ban on nonbiological-genetic parenthood can be derived from children’s right to know about their origins.²²⁵ Instead of focusing solely on biology, Shapiro emphasizes the relational perspective: “But what I’m wondering is whether it would have made him sad if he had known for sure that I wasn’t his biological child. [...] If I could ask him one thing, it would be: would it have made a difference for you?” This daughter directs the question to her father as to whether and how knowing the paternity status would have influenced his relationship with his daughter. She addresses that person as her father, even as she knows that she is not his descendent. Methodologically speaking, she deconstructs the category of biological father in order to reinstate her social father in the role of father. “Would it have made a difference?” is the crucial question for multiple family constellations.

Shapiro’s story does not provide an explanation, not only because the genetic facts require no further explanation, but also because the narration aims not at explaining but at listening and understanding.²²⁶ Specifically, this is about exploring avenues and perspectives towards interpreting existential experiences of relationship and belonging in a critical and accepting manner

for oneself. The possibilities of appropriating these experiences as one's own stories and having them become one's own biography lie hidden within the given narratives, that, while not one's own, enter into one's own stories. Behind this lies the identity-critical insight, which gained acceptance with Sigmund Freud and Erik H. Erikson at the latest, that a person is neither "master of one's own house"²²⁷ nor does the person have a stable ego identity: "The entire human experience however contradicts this immutability of a personal core. Nothing in our inner experience eludes change."²²⁸

Paul Ricœur confirmed Shapiro's experiences. In the context of life, the narrative forms the mediating medium between "characteristics of permanence and change".²²⁹ It makes possible a "synthesis of the heterogeneous" in which the experience of biographical "concordance" and "discordance" is composed as a coherent story.²³⁰ The narrator and the narrative figure neither stand apart from the narrative here, nor is one of them sovereign above the plot. Rather, the narrative figure *becomes* the protagonist of the story and thus the person telling the story. Therein lies the self-reflective or therapeutic function of autobiographical storytelling and writing. The person telling the story or writing moves into a symbolically mediated relationship with their own life story. Ricœur speaks of a risky "refiguration"²³¹ to which the self is exposed in the narrative and which cannot avoid the risk of failure and loss of identity. The unfinished, progressive narrative involving existential transformation experiences of personal identity denies any substantiality, permanence, or persistence of the subject. "In these moments of extreme deprivation, the *null* answer to the question 'Who am I?' alludes not to the futility but to the nakedness of the question itself."²³²

Ricœur also describes such transformations of ego as "conversions"²³³ and opens them up to theological interpretations. Paul reacts to the radical "nakedness of the question" with his confession: "it is no longer I who live, but it is Christ who lives in me" (Gal. 2:20) and the Heidelberg Catechism with the first answer, "I, with body and soul, both in life and in death, am not my own, but belong to my faithful Savior Jesus Christ".²³⁴ The apostles and Reformers did not describe a medical miracle or a medical-pathological condition, but interwove their biological and biographical lives with participation in the one life of God. Dani Shapiro also transcends the biological and biographical dimensions of life by placing her genetic and social heritage – and thus herself – within the narratively conveyed legacy of her Jewish origins. The analogies are not principally limited to religious references, even as Jewish narrative culture is para-

digmatic for the dynamic concept of identity-forming narrativity. Ego-identity occurs through "eccentric positioning"²³⁵ in other narratives – through the third dimension of life – in terms of listening and telling the story. In this sense, the biblical narratives "do not satisfy curiosity about knowledge that distracts or abstracts from the reality in which we find ourselves [...], but neither do they aim at a morality or a morally ordered world separated from the message that tells of what is already there, before we do or not do anything, and what the narrative permits us to experience further".²³⁶ The Judeo-Christian faith "as the 'existing within' and remaining in a story, and the attitude towards life corresponding with it, is always at the same time the 'inhabiting of perspectives'. From there all interpretations unfold".²³⁷ The third dimension of life as participation in the one life of the creator is revealed in the narration of God's covenant and blessing actions. From a Christian point of view, this is "about the grammar in which we can speak of God's action in Jesus Christ, which cannot be inserted into another history fashioned by human beings. It is about the grammar of the narratives in which God acts in Jesus Christ – and this means with regard to us and our world, so that his story continues along with us".²³⁸

5.3 The ethical discourse on reproductive medicine and child welfare

Topics and fields in which general legal regulations are up for discussion are particularly connected to the principles of discursiveness and reciprocity. The lack of a distinction between morals and the law weighs down and complicates many discourses within the church. When it comes to questions about the legal regulation of reproductive medicine, personal experiences as the child of one's parents or as the parent of one's children are part of it, but are not sufficient for an answer. The legal order of liberal democracies requires two things: 1. It is not freedoms, but restrictions on freedoms that require justification. 2. A political order is a just order if everyone can voluntarily agree to it.²³⁹ The rule of law does not have the task of confirming one's own views on life, but of protecting the way of life of all within the framework of applicable law. The legitimacy of laws does not require that everyone agree on the *matter*, but that they can agree to their general *application*.

Church statements seek to contribute to the well-founded and well-reflected formation of judgments and decisions, but not to force the persons concerned to follow a particular course in highly personal decisions or, inversely, to relieve them of making such decisions.

Socio-political issues challenge churches in three ways: 1. With a view to the range of their own positions and convictions; 2. with regard to one's own theological-ethical traditions; and 3. in the context of ecumenical connections and commitments. The three perspectives reflect both intersections and lines of conflict that need to be weighed carefully. The complex, historically evolved traditions of church discourse form a rich resource for reflection. At the same time, the unsettling normative breaks associated with modern development dynamics emerge here as well. The careful distinction between empirical and normative questions is thus indispensable to theological-ethical reflection from the point of view of the church. Precise knowledge of the situation cannot take the place of ethical judgment, but is indispensable to that end.

The more aspirations break with a valid order, the more challenging and urgent it becomes to have an objective discussion. This also applies to questions of parenthood for same-sex couples and child welfare: Same-sex parenting "crosses too many boundaries at once: the ideological boundary, as they seem to knowingly disregard the importance of either fathers or mothers; the structural boundary, as they favor either one-parent or two-mother or two-father households; and lastly the biogenetic boundary, as they bypass 'natural' reproduction."²⁴⁰

For the theological-ethical interpretative order of the church discussion on same-sex parenthood and child welfare from the perspective of covenant theology, the question becomes central of mediating between the *legal perspective* on autonomy and ethics and the biblical-theological perspective on relationships. Behind this lies a constellation of conflict that runs through the entire modern history of theology and place the topic before an extremely complex theological-ethical discourse horizon. One aspect here, the anthropological question of the respective images of humankind, set theology and law into a constructive tension. This is already evident in the fact that the expression of reproductive autonomy, which is prominent in legal discussion, is avoided in theological-ethical and church discussions or else used pejoratively. There are reservations both about the right to procreation based on autonomy theory and about the designation of procreation as *reproduction*. What is rejected here is a highly personal right to procreation as a "project that can be implemented according to plan, that can be shaped and controlled in its basic coordinates and can ultimately assume the character of a commission or even an order".²⁴¹

For a long time, a similar criticism shaped church statements across denominational boundaries. The focus here lies on the conflict over the limits of the availability of present and future life. It would be dishonest here to burden the desire for children of same-sex couples with all legitimate reservations about modern biotechnology worthy of discussion.²⁴² Instead, the same assumption applies to them that undoubtedly applies to natural reproduction: a couple who wish to have a child do not seek to control a life, but indeed to have a child. The fact that reproduction in most cases takes place privately, away from any public attention and can sometimes only be realized with the help of medical procedures or other support, says nothing about the seriousness and justification of the desire to have children. Nor does "nature" set the limits on human desires or determine their appropriateness. It frequently just does not "behave" the way some people want it to.

By contrast, the question of the relationship between desiring parents and the desired child is ethically demanding. In the discussion of reproductive medicine law, two peculiarities of the legal perspective became apparent: On the one hand, the law protects the interests of all those involved in the same way, but presupposes birth as a condition for personal fundamental rights. It therefore does not say much with regard to prenatal life. On the other hand, the strictly individualistic conception of personal autonomy means that parents and children stand side by side as separate legal entities or even enter into a relationship of divergent and competing interests. The paradigm of self-determination forces us to methodically separate out family members and regard them separately. In a sense, parents and children are placed in a natural state that gave birth to modern political philosophy: the individual person, for whom everyone else can appear as a possible enemy and from whom only contractual agreements based on state law can protect them.

This sort of perspective falls short as it excludes precisely that which constitutes parenthood, childhood, and family. How can family members develop a relationship that they do not, in every case, enter into voluntarily but which essentially defines each and every person? How can self-determined people as a couple – biblically speaking – become "one" and "one flesh" (Matt. 19:5f.) and what does that do to their personal freedom? The liberal answer is that they devote themselves to the other person of their own free will – in self-determination – without their status of autonomy being affected. What is described is a contractual relationship that is categorically distinguished from affective relationships

of love and care. This, above all, does not correspond with the situation of the child, who initially lives in complete dependence on the parents and is completely reliant on their love and care. The child's existential relationship to its parents is so fundamental that even the voluntary nature of parental behavior towards their child can be called into question. The perspective of autonomy is not sufficient to adequately capture parent-child relationships. It does not go far enough in view of both the parental action that essentially stands in for the child and the child's existential dependency on the parents. "Where appeals to individual autonomy play a central or decisive role in decisions to have children, the interests of the weak and vulnerable may be subordinated to the self-expression and preferences of the relatively powerful. It follows [...] that appeals to individual autonomy cannot support unrestricted reproductive rights."²⁴³ A strictly individualistic reproductive autonomy does not recognize the "value of bodily integrity (for example with regard to the particular bodily dimension of the female contribution towards reproduction) or the significance of interpersonal relations that can both be brought about or also suppressed through various reprogenetic practices."²⁴⁴

This does not however entail the rejection of the freedom to reproduce. Individual claims to freedom must instead be determined relationally, not from the perspective of isolated subjects, but within the context of lived relationships.²⁴⁵ Parent-child relationships are of a special nature: "Neither an exchange, nor contract, nor reciprocity form the core of this relationship, but the special quality of a relationship that is comprehensive in providing care [...] The very decision to become a parent – by whatever method – entails a self-commitment that follows a different logic than interest-based decisions; it seeks to create a space in which a relationship can develop and grow from the start."²⁴⁶ Moreover, procreation, pregnancy, and childbirth are and remain a risk that cannot be eliminated through medical means. Even "when it comes to treatment, despite all the activities involved, a child produced with help is not a product, but a gift."²⁴⁷ The birth of a child is not an act, neither that of the mother giving birth nor that of the child being born, but the reception of the world by the child and of the child by the world. It is not the *result* of parental and medical judgments and decisions, but an *event* of its own kind, which even goes beyond the wish to be a parent. The specifically Christian biblical view of procreation and birth is encountered in Paul's description of the members of the Corinthian community as "fathered in Christ [...] through the gospel" (1 Cor. 4:15: *egennēsa*). As the Reformation viewed the family as a

church in miniature, in analogy to the Reformed understanding of ministry as *verbi divini ministerium*, parenthood can be spoken of as *vitae divinae ministerium*. From a broader anthropological perspective, this reflects the insight of people who, while aware of their beginnings, "do not grasp their beginnings".²⁴⁸ With regard to parent-child relationships, a specific perspective of givenness follows here that maintains three key elements of our moral landscape: "Humility, responsibility and solidarity. [...] In a social world that values domination and control, parenting constitutes a school of humility. The fact that our children mean much to us, even as we cannot choose the ones we want, teaches parents to be open to the unsolicited. This openness is an attitude worth affirming, not only within families but also in the rest of the world. It invites us to endure the unbidden, to live with disagreement, to curb the urge to control."²⁴⁹

6 Conclusion

Ethical reflection does not have the task of making or anticipating concrete decisions. It can, however, identify situations of ethical conflict, analyze the problems, and structure the decision-making processes. On this basis, some points can be established that result from the preceding considerations and have fundamental relevance:

1. From a Reformed standpoint, marriage and family pertain as relationship forms to the realm of God's covenant acts.
2. The biological and biographical aspects of human life need to be addressed theologically and ethically within the horizon of life as the creator's gift of participation.
3. God's creative act of covenant and blessing does not emerge through biological causality and genetic genealogy, but narratively in the stories of God's presence alongside his creatures.
4. The basic Reformed conviction that Jesus Christ is Lord of the church and Lord of the world, includes reproductive medicine. God's acts of blessing and medically assisted reproduction are not mutually exclusive.
5. The biblical-Christian view of the child as a gift is under threat from two sides: technologically through the ever-increasing potential for intervention and morally through the assessment of the decisions that precede the birth of a child.

6. All children have the *same right* to have *their* parents recognized as their parents and to have themselves recognized as *their* parents' children.

7. No specific living conditions are particularly desirable for future children only because we grew up with them ourselves. Child welfare must not become a vehicle for one's own marital, parental, and family morality. The church practices of liturgy and ritual must be carefully considered and justified theologically, and must be able to meet changing living conditions.

8. With shifting limits of what is available, the scope for decision-making and responsibility have been expanding, while entailing the risk of being overwhelming both morally and socially.

9. Unwanted childlessness and an unfulfilled desire to have children have medical and social causes and need to be perceived and taken seriously as an existential fate that affects all aspects of the person in question.

10. The new beginning connected to every birth is based on the promise: "Before I formed you in the womb, I knew you" (Jer. 1:5). Reproductive medical measures should be oriented towards the new offspring directly understanding and experiencing themselves as God's creatures while being perceived as such by their fellow human beings.

Notes

1 Matthias Claudius an seine Frau Rebekka zur silbernen Hochzeit (1797): Matthias Claudius, *Sämtliche Werke*, München 1968, 472.

2 Hans G. Ulrich, *Wie Geschöpfe leben. Konturen evangelischer Ethik*, Münster 2005, 316f.

3 On the model function of marriage, cf. the statements of the Evangelischen Kirche in Deutschland (EKD): EKD, *Soll es künftig kirchlich geschlossene Ehen geben, die nicht zugleich Ehen im bürgerlich-rechtlichen Sinne sind? Zum evangelischen Verständnis von Ehe und Eheschliessung. Eine gutachtliche Äusserung*. EKD-Texte 101, Hannover 2009; *ibid.*, *Zwischen Autonomie und Angewiesenheit. Familie als verlässliche Gemeinschaft stärken. Eine Orientierungshilfe des Rates der Evangelischen Kirche in Deutschland (EKD)*, Gütersloh 2013; *ibid.*, *Zwischen Autonomie und Angewiesenheit – die Orientierungshilfe der EKD in der Kontroverse*, Hannover 2013.

4 Cf. Reiner Anselm/Peter Dabrock, *Die Lebensform als «Leitbild» für Ehe und Partnerschaft: Konrad Hilpert/Bernhard Laux (eds.), Leitbild am Ende? Der Streit um Ehe und Familie*, Freiburg/Br. 2014, 103–116 (103).

5 CPCE, "Before I formed you in the womb...": A Guide to the Ethics of Reproductive Medicine from the Council of the Community of Protestant Churches in Europe (CPCE), Vienna 2017, 22.

6 CPCE, *Before I formed you in the womb*, 37.

7 For an overview, see: Michael U. Braunschweig, *Ehe und Familie im Wandel – Entwicklungen in Recht und Politik*: Michael U. Braunschweig/Isabelle Noth/Mathias Tanner (eds.), *Gleichgeschlechtliche Liebe und die Kirchen. Zum Umgang mit homosexuellen Partnerschaften*, Zürich 2021, 13–36.

8 SEK [FSPC], *Vernehmlassungsantwort des Schweizerischen Evangelischen Kirchenbundes. Bericht über die rechtliche Situation gleichgeschlechtlicher Paare* (ISE-Texte 4/00): ISE aktuell 1/2000, 14; on the following, cf. SEK [FSPC], *Gleichgeschlechtliche Paare. Ethische Orientierung zum «Bundesgesetz über die eingetragene Partnerschaft gleichgeschlechtlicher Paare»*, 2nd revised edition, Bern 2008, 10–14.

9 Cf. Theologische Kommission des SEK (ed.), *Unterwegs zu neuen Horizonten. Gleichgeschlechtlichkeit. Überlegungen und Gesprächsanstösse zu den Stellungnahmen der Evangelischen Kirchen der Schweiz*, Bern 2001; Evangelisch-Reformierte Kirchen Bern-Jura, *Arbeitsmappe Gleichgeschlechtlichkeit*, Bern 1996; Hans-Balz Peter/Roland Campiche/Hans-Ulrich Germann (ed.), *Ehe und Familie für homosexuelle Paare? Rechtliche und ethische Aspekte, Studien und Berichte aus dem Institut für Sozialethik* 49, Bern 1995.

10 SEK, *Bericht*, 14.

11 Cf. SEK, *Paare*.

12 Cf. here and in the following the summary in SEK, *Paare*, 38–41.

13 SEK, *Paare*, 41.

14 Cf. SEK, *Paare*, 33f.

15 SEK, *Paare*, 30.

16 SEK, *Familie – Ehe – Partnerschaft – Sexualität aus evangelisch-reformierter Sicht*, Motion der Evangelisch-reformierten Kirche des Kantons St. Gallen vom 19.–21. Juni 2016: *Bericht und Antwort des Rates*, Bern, 25. April 2019.

17 SEK, *Protokoll der Abgeordnetenversammlung vom 16.–18. Juni 2019 in Winterthur*, 83.

18 SEK, *Protokoll der Abgeordnetenversammlung vom 4.–5. November 2019 in Bern*, 87.

19 Whether and to what degree pastoral freedom of conscience with regard to marrying same-sex couples collides with the prohibition on discrimination as stipulated in Art. 261^{bis} of the Swiss Legal Code and the PCS Constitution, has yet to be fully determined.

20 Cf. Thomas Gutmann, *Mutterschaft zwischen «Natur» und Selbstbestimmung. Preprints and Working Papers of the Centre for Advanced Study in Bioethics*, Münster 2016/90, 7–9.

21 Cf. the underlying considerations of Marco Hofheinz, *Im Bund. Theologische Impulse zur Sexual- und Sozialethik*, Solingen 2020; idem., «... *der Bund und die Treue hält ewiglich*». *Der Bund als Grundmetapher einer theologischen Ethik*: ZThK 117/2020, 164–195; in addition to the literature cited in these texts, cf. Peter Opitz, *Heinrich Bullinger als Theologe. Eine Studie zu den «Dekaden»*, Zürich 2004, 317–352; Lukas Vischer, ... *einen Bund mit euch und allen lebenden Wesen*: Emidio Campi/Peter Opitz (eds.), *Heinrich Bullinger. Life – Thought – Influence*. Zurich, Aug. 25–29, 2004. International Congress Heinrich Bullinger (1504–1575), Volume II, Zürich 2007, 961–976; and on Calvin's grace covenant as a hermeneutic category: Peter Opitz, *Calvins theologische Hermeneutik*, Neukirchen-Vluyn 1994, 202–229; on Bullinger's understanding of marriage, cf. Frank Mathwig, *Wie viel Segen für welche Ehe? Die aktuelle Ehediskussion in der Schweiz aus reformiert-kirchlicher Sicht*: ThZ 75/2019, 210–239 (as well as the literature discussed there); reprinted with minor changes in: Michael U. Braunschweig/Isabelle Noth/Mathias Tanner (eds.), *Gleichgeschlechtliche Liebe und die Kirchen. Zum Umgang mit homosexuellen Partnerschaften*, Zürich 2021, 143–185.

22 Opitz, Bullinger, 327f. (Bullinger quote, HBTS 2,82).

23 *Die Barmer Theologische Erklärung*: Georg Plasger/Matthias Freudenberg (eds.), *Reformierte Bekenntnisschriften. Eine Auswahl von den Anfängen bis zur Gegenwart*, Göttingen 2005, 243.

24 The Reformed understanding put forth by Karl Barth in his *Church Dogmatics* critically turns against a tendentially dualistic understanding of the covenant of nature and grace in the covenant theology of the 17th century; cf. Eberhard Busch, *Der eine Gnadenbund Gottes. Karl Barths neue Föderaltheologie*: ThQ 176/1996, 341–354.

25 Karl Barth, *Church Dogmatics* III/3 Geoffrey William Bromiley, Thomas Forsyth Torrance (eds.) 1958, 41. In the introduction to Section 41 on Creation and Covenant, he specified: "But according to this witness the purpose and therefore the meaning of creation is to make possible the history of God's covenant with man which has its beginning, its centre and its culmination in Jesus Christ."

26 Christian Link, *Schöpfung. Ein theologischer Entwurf im Gegenüber von Naturwissenschaft und Ökologie*, Neukirchen-Vluyn 2012, 265; with a citation of Eberhard Jüngel, *Die Möglichkeit theologischer Anthropologie auf dem Grund der Analogie*: *ibid.* Barth-Studien, Gütersloh 1982, 210–232 (218).

27 Cf. Magdalene L. Frettlöh, *Theologie des Segens. Biblische und dogmatische Wahrnehmungen*, Gütersloh 2002, 353–372. God explicitly blesses the fish and the birds (Gen. 1:22), as well as human beings (Gen. 1:28a), whereas God enters into a direct relationship with the latter by speaking to them directly (Gen. 1:28b).

28 Hans-Joachim Kraus, *Systematische Theologie im Kontext biblischer Geschichte und Eschatologie*, Neukirchen-Vluyn 1983, 172.

29 Heinrich Bullinger, *Der christliche Ehestand*: idem., *Schriften I*, Zürich 2004, 417–575 (437).

30 Johannes Calvin, *Die Ordonnances ecclésiastiques*. CStA, Bd. 2, Neukirchen-Vluyn 1997, 227–279 (263).

31 Bullinger, *Ehestand*, 511.

32 Cf. Max L. Stackhouse, *Globalization, Faith and Theological Education*: *Theological Education* 35/1999, 67–77 (76): "However, a covenant is different from a contract in that the terms of agreement and mutual promise are established by God [...]. God is always the party to covenant and sets its terms."

33 Cf. Mathwig, *Segen*, 228.

34 Bullinger, *Ehestand*, 435.

35 Calvin, *Kommentar zu Maleachi 2,14*; cited in John Witte Jr., *Zwischen Sakrament und Vertrag. Ehe als Bund im Genf Johannes Calvins*: *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte* 84/1998, 386–469 (421).

36 From a Reformed perspective, this needs to be maintained. What is important is the distinction between order-theological thoughts of the foundation of marriage as an *institution* and the perception of the *specific* marriage as one brought about by God; cf. the broad controversy in Germany: EKD, *Autonomie*; EKD, *Autonomie Kontroverse*.

37 Cited in Witte, *Sakrament*, 421.

38 Arguments from a Reformed point of view against the exclusive placement of sexuality within marriage are offered by Jan Milič Lochman, *Wegweisung der Freiheit. Die Zehn Gebote*, Stuttgart 1995, 100–113; Marco Hofheinz, *Kein Sex vor der Ehe? Theologisch-ethische Überlegungen zu einer schriftgemässen Sexualethik*: ZThG 20/2015, 78–103; *ibid.*, *Bund*, 35–41.

39 Hofheinz, *Bund*, 61.

40 Karl Barth, *Church Dogmatics* III/4 Geoffrey William Bromiley, Thomas Forsyth Torrance (eds.) 2004, 198–199.

41 Lochman, *Wegweisung*, 112.

42 Kraus, *Theologie*, 172.

43 On the following Hofheinz, *Bund*, 69–72.

44 This concept of existence points towards a perspective critical of ontology. Martin Heidegger's admonition in *Sein und Zeit*, Tübingen 1967, 118, that *Mitdasein* and *Auch-da-sein* are to be understood existentially and not categorially, is applied theologically by Karl Barth, *Church Dogmatics* II/1: "It is possible only when the theology dares to be theology and not ontology, and the question of a freedom of the creature which creates conditions for God can no longer arise."

45 Karl Barth, *Church Dogmatics*: I/2, 81.

46 Hans-Joachim Kraus, *Gottes Bund*: RKZ 120/1979, 234–237 (237).

47 Cf. following Karl Barth, Dominik A. Becker, *Sein in der Begegnung. Menschen mit (Alzheimer-)Demenz als Herausforderung theologischer Anthropologie und Ethik*. Überarbeitet und herausgegeben von Georg Plasger, Berlin 2010, 197–276.

48 On the significance of repetition for the covenant and faithfulness, cf. Christoph Menke, *die Lehre des Exodus. Der Auszug aus der Knechtschaft: Merkur* 70/2016, 47–54 (52f.).

49 Barth, CD III/2, 439.

50 Barth, CD III/2, 175.

51 Barth, CD IV/1: 109.

52 Barth, KD III/2, 248.

53 Jean-Luc Nancy, *singulär plural sein*, Berlin 2005, 101. The consequences for the theology of the covenant of the radicalized criticism of Heidegger on the part of Jean-Luc Nancy in opposition to Emanuel Levinas have yet to be acknowledged theologically; cf. however Philipp Stoellger, «Mit-Teilung und Mit-Sein: Gemeinschaft aus ›Neigung‹ zum Anderen. Zu Nancys Dekonstruktion der Gemeinschaft»: Elke Bippus/Jörg Huber/Dorothee Richter (eds.), «Mit-Sein». *Gemeinschaft – ontologische und politische Perspektivierungen*, Zürich, New York 2010, 45–64.

54 Hofheinz, *Bund*, 45; Cf. Jean-Luc Nancy, *Die undarstellbare Gemeinschaft*, Stuttgart 1988, 36, who speaks of the “revelation of *Mit-Sein* or *Miteinander-Sein*” with regard to death as the impossibility of immanence.

55 This is to include the observation that, for Barth, it is not people who meet, but people’s stories, whereby the concept of story refers both to narrative mediation and to the dynamic dimension of event, occurrence, and action. The form of *Selbst-mit-teilung* (self-communication) is the exclusive privilege of God.

56 Jochen Denker, «Erdet die Ehe!» *Auf der Suche nach gemeinschaftsgerechten Lebensformen*, 5: <https://www.reformiert-info.de/daten/File/Upload/doc-158-1.pdf> (18. 3. 2022).

57 Stoellger, *Mit-Teilung*, 51: “When the New Testament speaks of the ‘kingdom of God’, it is not about the ‘powers of this world’, but about a coming world and a coming community. For this kingdom ‘is coming’. The parables are the medium of choice for this. For the kingdom of God is expressed ‘in a parable as a parable’ and thus enters into the world. It is not only spoken of as a parable, through a distorted mirror, but its way of emergence is essentially linked to the form of the parable. The manner of truth (or the manner of community) lies in the performance of the parables. And they function like a good joke: they guide the listener towards the punchline so that they cannot not laugh.”

58 Karl Barth, *Ethics*. Dietrich Braun (ed.), Geoffrey W. Bromiley (transl.), 2013.

59 Frettlöh, *Theologie*, 363.

60 Frettlöh, *Theologie*, 352; with mention of Johannes Fischer, *Wie wird Geschichte als Handeln Gottes offenbar? On the significance of God’s presence in revelation: ZThK* 88/1991, 211–231 (220).

61 Barth, KD III/1, 86.

62 Cf. Barth, KD III/1, 84f.; Christian Link, Chr. Link, *Die theologischen Entscheidungen der Schöpfungslehre Karl Barths: Michael Beintker/Christian Link/Michael Trowitsch* (eds.), *Karl Barth im europäischen Zeitgeschehen (1935–1950)*, Zürich 2010, 137–159 (150f.).

63 Cf. Michael Coors, *Vom Lesen der Bibel als Heiliger Schrift. On the establishment of a theological doctrine of scripture: NZStH* 45/2003, 328–345 (341): “An understanding of the Bible that is not itself an interpretation but something akin to a reaction is an understanding of the Bible as Holy Scripture in the Holy Spirit. This pneumatological word event constitutes the practice of reading the Bible as Holy Scripture”.

64 Dietrich Ritschl, *Die Herausforderung von Kirche und Gesellschaft durch medizin-ethische Probleme. Ein Exposé zu einer Landkarte der medizinischen Ethik: id., Konzepte. Ökumene, Medizin, Ethik. Gesammelte Aufsätze*, München 1986, 213–244 (226).

65 Dietrich Ritschl, *Die Protestanten und das Wort: id., Theorie und Konkretion in der Ökumenischen Theologie. Kann es eine Hermeneutik des Vertrauens inmitten differierender semiotischer Systeme geben?*, Münster 2005, 159–163 (163).

66 Cf. Matthias Konradt, *Worum geht es in der Ethik des Neuen Testaments? Konzeptionelle Überlegungen zur Analyse und Reflexion ethischer Perspektiven im Neuen Testament: Helmut Schwier* (ed.), *Ethische und politische Predigt, Beiträge zu einer homiletischen Herausforderung*, Leipzig 2015, 61–86 (66): “Above all, however, a reflected analysis of the understanding of action means that concrete individual instructions are to be grasped from overarching perspectives of action and, in the event of conflict, also to be criticized. This is the only means of effectively dealing with the problem of conflicting ethical positions in the New Testament.”

67 Dietrich Ritschl, *Zur Logik der Theologie. Kurze Darstellung der Zusammenhänge theologischer Grundgedanken*, München 21988, 55.

68 Frettlöh, *Theologie*, 378f.

69 Cf. Opitz, Bullinger, 321–323.

70 Opitz, Bullinger, 325.

71 Lochman, *Wegweisung*, 106.

72 Cf. Lochman, *Wegweisung*, 15–17: *Die biblischen Weisungen – allen voran der Dekalog – sind kein «allgemein und zeitlos konzipierter codex iuris moralis», sondern eine «magna charta der Befreiung», die keine «vor-christliche» Gesetzmäßigkeit restituiert.*

73 Bernhard Schlink, *Die überforderte Menschenwürde: ibid., Vergewisserungen. Über Politik, Recht, Schreiben und Glauben*, Zürich 2005, 125–136 (125f.).

74 Cf. Barbara Duden, *Frauen-«Körper»: Erfahrung und Diskurs (1970–2004)*: Ruth Becker/Beate Kortendiek (eds.), *Handbuch Frauen- und Geschlechterforschung. Theorie, Methoden, Empirie*, Wiesbaden 2010, 601–615.

75 Cf. Frank Mathwig, *Das Kind beim Namen nennen?! Zur metaphorischen Sprache in der Bioethik*: Marco Hofheinz/Michael Coors (eds.), *Die Moral von der Geschichte' ... Ethik und Erzählung in Medizin und Pflege*, Leipzig 2016, 127–147.

76 Cf. Marcel Mauss, *Die Gabe. Form und Funktion des Austauschs in archaischen Gesellschaften*, Frankfurt/M. 1990, 33.

77 Dieter Birnbacher, *Tod*, Berlin 2017, 4.

78 Michelle Cottier, *Elternschaft im Zeitalter der globalisierten Biotechnologie: Leihmutterchaft, Eizell- und Embryonenspende im Rechtsvergleich*: Ingeborg Schwenger/Andrea Büchler/Roland Fankhauser (eds.), *Siebte Schweizer Familienrechtstage*, 23./24. Januar 2014 in Basel, Bern 2014, 3–40 (5).

79 Peter Dabrock, *Bioethik des Menschen*: Wolfgang Huber/Thorsten Meireis/Hans-Richard Reuter (eds.), *Handbuch evangelischer Ethik*, München 2015, 517–583 (520).

80 Cf. Peter Dabrock, *Playing God? Synthetic biology as a theological and ethical challenge*: *Systems and Synthetic Biology* 3/2009, 47–54.

81 Andreas Bernard, *Kinder machen. Neue Reproduktionstechnologien und die Ordnung der Familie*. Samenspender, Leihmütter, Künstliche Befruchtung, Frankfurt/M. 2014, 249.

82 Before the introduction of insemination and IVF, the unfulfilled desire to have children could not be addressed by medicine, but practically only by a surrogate mother or, in terms of hope, by a superhuman power.

83 On the religious attribution of significance, cf. Christina von Braun, *Bild und Geschlecht in den drei «Religionen des Buches»*: Judentum, Christentum, Islam: *Paragrana* 20/2011, H. 2, 28–40 and idem., *Blutsbande. Verwandtschaft als Kulturgeschichte*, Berlin 2018.

84 Cf. Barbara Duden, *Geschichte der Ungeborenen. Zur Erfahrungs- und Wissenschaftsgeschichte von Schwangerschaft*, 17.–20. Jahrhundert, Göttingen 2002.

85 Bernard, *Kinder*, 247.

86 Cf. Christiane König, *Reproduzieren: Netzwerk Körper* (eds.), *What Can A Body Do? Praktiken des Körpers in den Kulturwissenschaften. Praktiken*, Frankfurt/M. 2012, 83–96 (85); cf. the comprehensive treatment in Bettina Bock von Wülffingen, *Genetisierung der Zeugung. Eine Diskurs- und Metaphernanalyse reproduktionsgenetischer Zukünfte*, Bielefeld 2007, esp. 55–75.

87 König, *Reproduzieren*, 86.

88 The data refer to information from the 30 centers for reproductive medicine in Switzerland; cf. BfS, *Reproduktive Gesundheit. Medizinisch unterstützte Fortpflanzung im Jahr 2019*, Neu-

châtel, Mai 2021; BfS, *Medizinisch unterstützte Fortpflanzung: Behandlungen und Resultate, Gesamtansicht 2002–2019*, Neuchâtel, 10.05.2021.

89 BfS, *Gesundheit*, 2.

90 BfS, *Medizinisch unterstützte Fortpflanzung: behandelte Personen, Indikationen und Anwendung von gespendeten Spermien 2007–2019*, Neuchâtel, 10.5.2021.

91 BfS, *Fortpflanzung*.

92 Cf. BAG, *Umgang mit Embryonen nach In-vitro-Fertilisation*: <https://www.bag.admin.ch/bag/de/home/zahlen-und-statistiken/zahlen-fakten-zu-fortpflanzungsmedizin/medizinische-praxis-im-bereich-fortpflanzung/umgang-mit-embryonen-nach-in-vitro-fertilisation.html> (12. 1. 2022); BfS, *Medizinisch unterstützte Fortpflanzung: überzählige Embryonen 2007–2019*, Neuchâtel, 10.5.2021.

93 89.5% of the embryos were destroyed due to their developmental arrest, 2.7% of the embryos due to their poor developmental potential, 2.1% of the embryos due to the couple's discontinuation of treatment, and 3.4% of the embryos due to a genetic abnormality.

94 Ronald Dworkin, *Life's Dominion: An Argument about Abortion, Euthanasia, and Individual Freedom*, New York, London 1993; cf. auch John A. Robertson, *Children of Choice. Freedom and the New Reproductive Technologies*, Princeton NJ 1994 and Erin L. Nelson, *Law, Policy and Reproductive Autonomy*, London 2013.

95 Barbara Bleisch/Andrea Büchler, *Kinder wollen. Über Autonomie und Verantwortung*, München 2020, 261; cf. Katharina Beier/Claudia Wiesemann, *Reproduktive Autonomie in der liberalen Demokratie. Eine ethische Analyse*: Claudia Wiesemann/Alfred Simon (eds.), *Patientenautonomie. Theoretische Grundlagen – Praktische Anwendungen*, Münster 2013, 205–221 (206).

96 Andrea Büchler, *Reproduktive Autonomie und Selbstbestimmung. Dimensionen, Umfang und Grenzen an den Anfängen des menschlichen Lebens*, Basel 2017, 18.

97 The significance of this initially negative and defensive legal intention is immediately apparent from the historical experiences of violent state control and racist-eugenic instrumentalization of human reproduction, including the compulsory castration and sterilization carried out by state authorities in Switzerland until 1987.

98 Bleisch/Büchler, *Kinder*, 37.

99 Bleisch/Büchler, *Kinder*, 41.

100 Cf. Marcus Düwell, *Bioethik. Methoden, Theorien und Bereiche*, Stuttgart 2008, 144.

101 Cf. for the following Düwell, *Bioethik*, 143–145; Katharina Beier/Claudia Wiesemann, *Reproduktive Autonomie in der liberalen Gesellschaft*: Wiesemann/Simon (eds.), *Patientenautonomie*, 205–221; Bleisch/Büchler, *Kinder*, 37–58; Nelson, *Law*, 34ff.

102 *Social Freezing* refers to the cryopreservation of egg cells for non-medical reasons, i.e. for a later pregnancy, in order to compensate for the age-related reduction in female fertility that begins from the age of 35.

103 Non-invasive prenatal diagnostics (NIPT) is used to screen for (and not diagnose) fetal chromosomal disorders (especially trisomies) using a blood sample from the mother.

104 *Prenatal diagnostics* (PND) includes different invasive and non-invasive methods of prenatal diagnostics.

105 In contrast to elective abortion due to a situation affecting the pregnant woman, selective termination of pregnancy is carried out due to certain undesirable characteristics of the embryo or foetus.

106 *CRISPR* (Clustered Regularly Interspaced Short Palindromic Repeats)/Cas9 (CRISPR-associated protein 9) is a promising genome editing method used to screen the genome and specifically modify it through corrective interventions.

107 Konrad Hilpert, *Recht auf reproduktive Autonomie. Sinn und Problematik eines aktuellen menschenrechtlichen Topos*: Irene Klissenbauer et al. (eds.), *Menschenrechte und Gerechtigkeit als bleibende Aufgaben. Beiträge aus Religion, Theologie, Ethik, Recht und Wirtschaft. Festschrift für Ingeborg G. Gabriel*, Göttingen 2020, 413–428 (413).

108 Bleisch/Büchler, *Kinder*, 42.

109 Zur kritischen Diskussion der Kriterien Cf. Andrea Büchler/Bernhard Rütsche, *Untersuchungen des Erbgutes von Keimzellen und von Embryonen in vitro und deren Auswahl*: *ibid.* (eds.), *Fortpflanzungsmedizinengesetz (FMedG). Bundesgesetz vom 18. Dezember 1998 über die medizinisch unterstützte Fortpflanzung*, Bern 2020, 269–336.

110 Cf. NEK, *Überlegungen zur ethischen Einschätzung des Nicht-Invasiven Pränatal-Tests (NIPT)*. Stellungnahme Nr. 26/2016, Bern, 9. Dezember 2016; SEK, *Leben testen? 10 Fragen – 10 Antworten zu neuen pränatalen Tests aus theologisch-ethischer Sicht*, Bern 2013.

111 Cf. NEK, *Gene editing an menschlichen Embryonen – Eine Auslegeordnung*. Stellungnahme Nr. 25/2016, Bern 2016; Deutscher Ethikrat, *Eingriffe in die menschliche Keimbahn*. Stellungnahme, Berlin 2019.

112 Cf. Beier/Wiesemann, *Autonomie*.

113 The new regulation goes beyond the reproductive medical provisions in the Partnership Act (Art. 28): “Persons living in a registered partnership are not permitted to pursue joint adoption or reproductive medical procedures.”

114 Egg cell donation, uterine transplantation, and surrogate mothers are prohibited in Switzerland. Counseling with regard to egg donation and supporting people who have undergone treatment abroad is legal. There is evidence that reproductive medicine centers based in Switzerland offer egg donations via procedures performed abroad; cf. Isotta Magaton/Michael von

Wolff, *Eizellspende und Leihmutterschaft. Teil 1: Eizellspende: Gynäkologie 1/2021*, 24–27; 19.3778 *Interpellation Irène Kälin, Eizellspende in Schweizer IVF-Zentren vom 20.6.2019*.

115 BGE 115 Ia 234, E. 5a.

116 Cf. Andreas R. Ziegler, *Kurzgutachten zur Frage des Zugangs gleichgeschlechtlicher Paare zu fortpflanzungsmedizinischen Verfahren in der Schweiz (Auslegung des Begriffs der «Unfruchtbarkeit» in Art. 119 Abs. 2 Bst. c BV)*, Lausanne, 19. Januar 2019; BMJV, *Reformbedarf im Abstammungsrecht. Bericht der Expert-inn-engruppe*, Freiburg/Zürich, 21. Juni 2021, 9; *Bericht der Kommission für Rechtsfragen des Nationalrates*, BBI 2019, 8610f.

117 *Botschaft über die Volksinitiative «zum Schutz des Menschen vor Manipulationen in der Fortpflanzungstechnologie (Initiative für menschenwürdige Fortpflanzung, FMF)» und zu einem Bundesgesetz über die medizinisch unterstützte Fortpflanzung (Fortpflanzungsmedizinengesetz, FMedG) vom 26. Juni 1996*, BBI 1996 III 205–305 (250f).

118 The Federal Council's reasoning at the time provides a blueprint for current church-internal debates.

119 Cf. *Botschaft zum Bundesgesetz über die eingetragene Partnerschaft gleichgeschlechtlicher Paare vom 29. November 2002*, BBI 2003, 1288–1377 (1324). The circular nature of the argument is that the ban on sperm donation and surrogate motherhood for same-sex couples is again based on child welfare.

120 Andrea Büchler, *Die Eizellenspende in der Schweiz de lege lata und de lege ferenda*. *Rechtsgutachten verfasst im Auftrag des Bundesamtes für Gesundheit Zürich*, im November 2013, aktualisiert im Januar 2014, 17.

121 Cf. NEK, *Die medizinisch unterstützte Fortpflanzung. Ethische Überlegungen und Vorschläge für die Zukunft*. Stellungnahme Nr. 22/2013, Bern, November 2013, 20f.

122 Cf. Ziegler, *Kurzgutachten*, 8: Art. 119 of the Swiss Constitution involves “first and foremost determining when one would refrain from medical treatment, because a pregnancy would result even without treatment and this medical treatment or the use of reproductive medical procedures would therefore seem (as yet) unnecessary. Since Art. 119, on the whole, aims to protect people from abuse in the field of reproductive medicine (Par. 1), Art. 119.2c can only be understood to be specifying this abuse. This abuse can be assumed when treatment is medically unnecessary to achieve pregnancy.”

123 Cf. Beier/Wiesemann, *Autonomie*, 210.

124 The American Thomas Beatie, born as Nancy and who had undergone medical gender reassignment, became the first man in the world to give birth in 2008. Whether uterus transplantation for men is medically and biologically possible is a matter of controversy; cf. Andrea Büchler/Eva Schlumpf, *Transplantiertes Mutterglück. Rechtliche und ethische Herausforderungen der Uterustransplantation: Jusletter 1. Mai 2017*, 36.

125 On the possibilities and limitations of challenging the assumption of paternity, cf. BMJV, Reformbedarf.

126 Bleisch/Büchler, *Kinder*, 213.

127 BBI 1996 III, 254f.

128 This does not include IVF treatment using one's own egg cells – unfertilized or fertilized – that are previously removed and frozen (social egg freezing); cf. Nationale Ethikkommission im Bereich der Humanmedizin NEK, *Social Egg Freezing – eine ethische Reflexion*. Stellungnahme Nr. 28/2017, Bern 2017.

129 Büchler, *Eizellenspende*, 6. The prohibition also applies to the “joint motherhood” among same-sex female couples, in which the egg cell comes from one partner and the child is carried to term by the other.

130 Cf. Andrea Büchler/Nora Bertschi, *Gewünschtes Kind, geliehene Mutter, zurückgewiesene Eltern? Leihmutterschaft in den USA und die Anerkennung des Kindesverhältnisses in der Schweiz*, *FamPra* 2013, 33–56; Michelle Cottier, *Die instrumentalisierte Frau: Rechtliche Konstruktionen der Leihmutterschaft: Juridikum* 2/2016, 188–198; Bericht zur Leihmutterschaft. Bericht des Bundesrates vom 29. November 2013 in Beantwortung des Postulates 12.3917 vom 28. September 2012.

131 Bleisch/Büchler, *Kinder*, 230f.

132 On the following: Cottier, *Frau*.

133 Cottier, *Frau*, 194.

134 BBI 1996 III, 254.

135 Bericht zur Leihmutterschaft, 19.

136 Cf. Dani Shapiro, *Inheritance. A Memoir of Genealogy, Paternity and Love*, New York 2019.

137 Cf. Bericht zur Leihmutterschaft, 17: “This commercialization of human reproduction has given rise to reproductive tourism by Swiss people abroad, even as avoiding this was one of the fundamental goals of Swiss legislation in the field of reproductive medicine.”

138 Bericht zur Leihmutterschaft, 30f.

139 Ernst Bloch, *Prinzip Hoffnung*, Frankfurt/M. 1984, 2628

140 Cf. Klaus von Stosch, *Gott wird Kind. Das Gottes- und Menschenbild der Inkarnationstheologie: ThPQ* 162/2014, 380–389.

141 Hartmut Rosa, «Das Grundbedürfnis nach Religion wird bleiben». Gespräch mit Stefan Orth: *Herder Korrespondenz* 10/2017, 17–20 (18).

142 Kim Bergman, cited in Bernard, *Kinder*, 474.

143 This was preceded by the Best-Interest Standard of the President's Commission for the Study of Ethical Problems in Medicine and Biomedical and Behavioral Research, *Deciding to*

forego life-sustaining treatment. A report on the ethical, medical, and legal issues in treatment decisions, Washington 1983; cf. Andrea Dörries, *Der Best-Interest Standard in der Pädiatrie – theoretische Konzeption und klinische Anwendung*: Claudia Wiesemann et al. (eds.), *Das Kind als Patient*, Frankfurt/M. 2003, 116–130.

144 Cf. Frank Surall, *Ethik des Kindes. Kinderrechte und ihre theologisch-ethische Rezeption*, Stuttgart 2009, esp. 77–86.

145 Cf. Alexander Bagattini, *Kindeswohl: Johannes Drerup/Gottfried Schweiger* (eds.), *Handbuch Philosophie der Kindheit*, Heidelberg 2019, 128–136 (129).

146 Andrea Büchler/Sandro Clausen, *Verfahren der medizinisch unterstützten Fortpflanzung: Büchler/Rütsche* (eds.), *Fortpflanzungsmedizinengesetz*, 191–235 (195).

147 Cf. UNICEF, *Implementation Handbook for the Convention of the Rights of the Child*, fully revised third edition, Geneva 2007, 37.

148 Friederike Wapler, *Kinderrechte und Kindeswohl. Eine Untersuchung zum Status des Kindes im Öffentlichen Recht*, Tübingen 2015, 237.

149 Wapler, *Kinderrechte*, 406.

150 Deutscher Ethikrat, *Embryospende, Embryooption und elterliche Verantwortung*. Stellungnahme, Berlin 2016, 87.

151 Cf. Wapler, *Kinderrechte*, 409.

152 Janusz Korczak, *Wie man ein Kind lieben soll* (1928), Göttingen 142008, 40.45; zit. n. Wapler, *Kinderrechte*, 410.

153 Cf. Claudia Wiesemann, *Der moralische Status des Kindes in der Medizin: Johann S. Ach/Beate Lüttenberg/Michael Quante* (eds.), *wissen.leben.ethik. Themen und Positionen der Bioethik*, Münster 2013, 155–168. (158–163); Cf. *ibid.*, *Von der Verantwortung, ein Kind zu bekommen. Eine Ethik der Elternschaft*, München, 2006, 108–124; *ibid.*, *Moral Equality, Bioethics, and the Child*, Dordrecht, New York 2016, 133–138.

154 Deutscher Ethikrat, *Embryospende*, 86.

155 Wiesemann, *Status*, 161; cf. Anja Karnein, *Zukünftige Personen. Eine Theorie des ungeborenen Lebens von der künstlichen Befruchtung bis zur genetischen Manipulation*, Frankfurt/M. 2013, 171–175.

156 Joel Feinberg, *The Child's Right to an Open Future: William Aiken/Hugh LaFollette* (eds.), *Whose Child? Children's Rights, Parental Authority, and State Power*, Totowa, NY 1980, 124–153 (127).

157 BBI 1996 III, 254; cf. Bernhard Rütsche, *Rechte von Ungeborenen auf Leben und Integrität. Die Verfassung zwischen Ethik und Rechtspraxis*, Zürich, St. Gallen 2009, 520–527.

158 BBI 1996 III, 250.

159 BBI 1996 III, 249.

160 Andrea Büchler/Sandro Clausen, Fortpflanzungsmedizin und Kindeswohl! Kindeswohl und Fortpflanzungsmedizin?: FamPra.ch 02/2014, 231–273 (239.243).

161 Rüttsche, Rechte, 522.

162 Cf. Büchler/Clausen, Verfahren, 193–229.

163 Niels Petersen, The Legal Status of the Human Embryo in vitro: General Human Rights Instruments: ZaöRV 65 (2005), 447–466 (466).

164 Büchler/Clausen, Verfahren, 205.

165 The conflict arises exclusively in the context of medically assisted reproduction, since – in contrast to the fundamentally protected privacy of natural procreation – third parties (medical, laboratory, nursing, counseling staff) are directly involved there.

166 Cf. Büchler/Clausen, Verfahren, 205: “Within the context of reproductive medicine, however, there is no such thing as a child whose well-being is to be safeguarded, which is why the criterion of child welfare is void in this regard. It seems all the more contradictory not to allow the child to develop in the first place on the grounds that its well-being should be protected. Not allowing reproductive medical treatment due to safeguarding the best interests of the child always entails the assessment that the child to be conceived would be harmed as a result. Ultimately, however, it is assumed that the potential child would be better off not existing.”

167 On the non-identity-problem cf. Büchler/Clausen, Verfahren, 206: “If life is generally seen as worth living on the basis of human dignity, its emergence cannot be prevented on the basis of speculation about possible happiness and unhappiness in life.”

168 Cf. Kurt Seelmann, Gutachten im Auftrag des Bundesamts für Gesundheit über «Zugang zur Fortpflanzungsmedizin für alle?», Basel, April 2018, 10–12.

169 Seelmann, Gutachten, 12.

170 On the concept of bionormativity, cf. Charlotte Witt, A Critique of the Bionormative Concept of the Family: Françoise Baylis/Carolyn McLeod (eds.), Family-Making. Contemporary Ethical Challenges, Oxford 2014, 49–63; Katharine K. Baker, Bionormativity and the Construction of Parenthood, Georgia Law Review 42/2008, 649–715.

171 BBI III, 250.

172 Cf. the comprehensive theological-ethical study by Marco Hofheinz, Gezeugt, nicht gemacht. In-vitro-Fertilisation in theologischer Perspektive, Zürich, Berlin 2008.

173 Angelika Krebs, Naturethik im Überblick: *ibid.* (eds.), Naturethik. Grundlagentexte der gegenwärtigen tier- und ökoethischen Diskussion, Frankfurt/M. 1997, 337–379 (340); from a theological perspective cf. Günter Thomas, Instabilitäten im Naturbegriff und Ambivalenzen der Natur. Einführende Beobachtungen zu den naturalen Seiten der Schöpfung: Jahrbuch für Biblische

Theologie (JBTh), vol. 34 (2019): Natur und Schöpfung, Göttingen 2020, 1–24; on the significance of “nature” in social, legal, and ethical contexts, cf. Markus Rothhaar/Martin Hähnel (eds.), Normativität des Lebens – Normativität der Vernunft?, Berlin, Boston 2015; Markus Rothhaar/Martin Hähnel (eds.), Normativität des Lebens – Normativität der Vernunft?, Berlin, Boston 2015; Gutmann, Mutterschaft.

174 Cf. on the *naturam sequi* argument: Krebs, Naturethik, 358–360.

175 Dieter Birnbacher, Natürlichkeit, Berlin, New York 2006, 144.

176 Birnbacher, Natürlichkeit, 145.

177 NEK, Fortpflanzung, 28.

178 Cf. Thomas, Instabilitäten, 19–21; *ibid.*, Neue Schöpfung. Systematisch-theologische Untersuchungen zur Hoffnung auf das «Leben in der zukünftigen Welt», Neukirchen-Vluyn 2009, 131–133.

179 Thomas, Instabilitäten, 19f.

180 Thomas, Instabilitäten, 20.

181 NEK, Fortpflanzung, 52.

182 Büchler, Eizellspende, 17. With the extension of sperm donation to marriages between two women, the Federal Council revised its earlier position within the framework of a “reinterpretation of Art. 119.2c Fed. Const. [...], according to which the constitutional concept of infertility corresponds to the unfulfilled desire to have children and thus is also applicable to same-sex couples” (BMJV, Reformbedarf, 9).

183 Seelmann, Gutachten, 23.

184 Seelmann, Gutachten, 24.

185 *Ibid.*

186 Büchler/Clausen, Fortpflanzungsmedizin, 272.

187 Seelmann, Gutachten, 12.

188 Cf. for the following Guido Pennings, Gleichgeschlechtliche Elternschaft und das moralische Recht auf Familiengründung: Dorett Funcke/Petra Thorn (eds.), Die gleichgeschlechtliche Familie mit Kindern. Interdisziplinäre Beiträge zu einer neuen Lebensform, Bielefeld 2010, 225–249 (231–233); cf. as an introduction from a Swiss point of view Nathalie Meuwly, Gleichgeschlechtliche Paare: sexuelle Orientierung, Beziehungsqualität, Elternschaft und gesellschaftliche Akzeptanz: Braunschweig/Noth/Tanner (eds.), Liebe, 37–50.

189 Pennings, Elternschaft, 232.

190 Seelmann, Gutachten, 13.

191 Seelmann, Gutachten, 14.

192 Pennings, Elternschaft, 241f.

- 193 Cf. Pennings, Elternschaft, 242f.
- 194 Büchler/Clausen, Fortpflanzungsmedizin, 245f.; cf. Büchler, Autonomie, 134–136.
- 195 Katharina Beier/Claudia Wiesemann, Die Dialektik der Elternschaft im Zeitalter der Reprogenetik. Ein ethischer Dialog: DZPhil 58/2010, 855–871 (858).
- 196 Hannah Arendt, Vita activa oder Vom tätigen Leben, München 1981, 167. Translation of Arendt's rewritten German version into English by the translator.
- 197 Arendt, Vita activa, 15.
- 198 Ludger Lütkehaus, Natalität. Philosophie der Geburt, Kusterdingen 2006, 66; cf. Christina Schües, Philosophie des Geborens, Freiburg/Br., München 2008.
- 199 Claudia Wiesemann, Natalität und die Ethik von Elternschaft: ZfPP 2/2015, 213–236 (218).
- 200 Wiesemann, Natalität, 219.
- 201 Wiesemann, Verantwortung, 99f.
- 202 Bernard, Kinder, 466; Cf. Albrecht Koschorke, Die Heilige Familie und ihre Folgen. Ein Versuch, Frankfurt/M. 2000, describes the ecclesiastical-theological transformation of the family history of Jesus into the order model of the Holy Family as a historical process of intimacy.
- 203 Bernard, Kinder, 468.
- 204 von Braun, Blutsbande, 17.
- 205 Cf. Christina von Braun, Blut und Tinte: *ibid.*/Christoph Wulf (eds.), Mythen des Blutes, Frankfurt/M. 2007, 344–362.
- 206 Von Braun, Blutsbande, 137.
- 207 Cf. Bernard, Kinder, 478.
- 208 Sarah Franklin, Biological Relatives: IVF, Stem Cells, and the Future of Kinship, London, Durham 2013, 16, points to the incorrectness of the blood metaphor, as blood is the only substance that does not penetrate the placental barrier in pregnant women.
- 209 Cf. von Braun, Blutsbande, 19.
- 210 Albrecht Koschorke et al., Vor der Familie. Grenzbedingungen einer modernen Institution, Konstanz 2010, 8f.
- 211 On the community-forming significance of the connection between the word, blood, and sacrifice in the Eucharist cf. Micha Brumlik, Blut, Intellekt und Liebe – Faktoren politischer Vergemeinschaftung: von Braun/Wulf (eds.), Mythen, 257–271 (264–268).
- 212 Johannes Fischer, Das christliche Lebensverständnis als Motiv und Kriterium für den Umgang mit Leben: Eilert Herms (ed.), Leben. Verständnis. Wissenschaft. Technik, Gütersloh 2005, 135–149 (139).
- 213 Retelling here implies both the continuation of the story and the telling oneself and others of new things. Cf. Hans G. Ulrich, Wie Geschöpfe leben – Zur narrativen Exploration im geschöpflichen Leben. Aspects of an ethics of narratives: Marco Hofheinz/Frank Mathwig/Matthias Zeindler (eds.), Ethik und Erzählung. Theologische und philosophische Beiträge zur narrativen Ethik, Zürich 2009, 303–328 (320): “This ties the narrative to the historically given situation and does not allow for becoming meta-historical. So the question remains as to how it continues from here, how it continues within the logic of the story. What matters is that it continues. It is different from a novel, which finds an end in itself.”
- 214 Koschorke, Familie, 28, points out that, in terms of conceptual history, the term “family” only appeared in the modern era.
- 215 Bernard, Kinder, 475f.
- 216 Cf. Brigitta Hauser-Schäublin, Blutsverwandtschaft: von Braun/Wulf (eds.), Mythen, 171–183 (173–177).
- 217 Cf. aus literaturwissenschaftlicher Sicht Sigrid Weigel et al. (eds.), Generation. Zur Genealogie des Konzepts – Konzepte von Genealogie, München 2005.
- 218 Erik H. Erikson, Identität und Lebenszyklus. Drei Aufsätze, Frankfurt/M. 1973, 107, understood *ego identity* as “the accrued confidence that the sameness and continuity that one has in the eyes of others corresponds with an ability to maintain an inner sameness and continuity”. On the theological and philosophical discussion of identity, cf. Christian Cebulj/Johannes Flury (eds.), Heimat auf Zeit. Identität als Grundfrage ethisch-religiöser Bildung, Zürich 2012; Alexander Deeg/Stefan Heuser/Arne Manzeschke (eds.), Identität. Biblische und theologische Erkundungen, Göttingen 2007; Hennig Luther, Religion und Alltag. Bausteine zu einer Praktischen Theologie des Subjekts, Stuttgart 1992; Katja Crone, Identität von Personen. Eine Strukturanalyse des biographischen Selbstverständnisses, Berlin, Boston 2016; Erik H. Erikson, Identität; Benjamin Jörissen/Jörg Zirfas (eds.), Schlüsselwerke der Identitätsforschung, Wiesbaden 2010; Odo Marquard, Zukunft braucht Herkunft. Philosophische Betrachtungen über Modernität und Menschlichkeit: *idem.*, Zukunft braucht Herkunft. Philosophische Essays, Stuttgart 2003, 234–246; Odo Marquard/Karlheinz Stierle, Identität, München ²1996; Kurt Röttgers, Identität als Ereignis. Zur Neufindung eines Begriffs, Bielefeld 2016.
- 219 Cf. Paul Ricœur, Narrative Identität: Heidelberger Jahrbücher XXX/1986, 57–67 (57); *idem.*, L'identité narrative: Esprit 140/141, 1988, 295–304.
- 220 Response from an interview by Barbara Duden/Silja Samerski, “Pop genes”: An investigation of the “gene” in popular parlance: Regula Valérie Burri/Joseph Dumit (eds.), Biomedicine as Culture. Instrumental Practices, Technoscientific Knowledge, and New Modes of Life, New York, London 2007, 167–189 (174)
- 221 The wish of same-sex couples to found a family with their “own genetic” children, leads to hybrid constellations in which children paradoxically do not grow up in families with their “own genetic” parents.

222 The following quotes are from Dani Shapiro, Da war immer etwas gewesen, das mir fremd vorkam. Interview mit Sascha Chaimowicz: Zeitsmagazin 27/2020, 30–35; cf. Shapiro, Inheritance.

223 Cf. the identity-semantic distinction made by Emmanuel Lévinas, Die Spur des Anderen. Untersuchungen zur Phänomenologie und Sozialphilosophie, Freiburg/Br., München 1983, 215f., between the ancient travelers Abraham and Odysseus. The journeys of the Greek hero stand for a movement that leads from the “other” to the “own [...] back to Ithaca”, while the patriarch of Israel stands for a migrant “who leaves his fatherland forever for another unknown land, and who orders his servant not even to lead his son back to the point of departure.”

224 Cf. Emmanuel Lévinas, Schwierige Freiheit. Versuch über das Judentum, Frankfurt/M. 1992, 161: “The Judaism of the diaspora no longer has an inside. It has advanced very far into a world which, however, it resists.”

225 Whether this, conversely, implies a child’s *moral* right to grow up with his or her genetic-biological parents is another question that requires a very in-depth answer.

226 Cf. Ulrich, Exploration, 312f.: “What needs to be said about the narrative must be recognizable by its form. It is crucial that the narration, which follows and supports the progress of the story, does not contain an explanation that places the story into a particular context or provides it with a concluding point. The lack of such explanations is part of the form of the biblical narrative. The story thus prompts listening and understanding. In this way they touch those who hear them and their world.”

227 Sigmund Freud, Eine Schwierigkeit der Psychoanalyse. GW 12, Frankfurt/M. 1947, 3-12 (11).

228 Ricœur, Identität, 57.

229 Ricœur, Identität, 58.

230 Ricœur, Identität, 60.

231 Ricœur, Identität, 65.

232 Ricœur, Identität, 67. Jean-Luc Nancy, Singulär plural sein, Berlin 2004, 21; cf. *ibid.*, Die undarstellbare Gemeinschaft, Stuttgart 1988, radicalizes the perspective and replaces the Cartesian “ego sum” with an “ego sumus”: Personal being can only exist in a being with one another. Togetherness forms the stage “upon which the actors present each other as egos. But behind this stage play there is no actual reality that shows the actors to be mere puppets of a grand plan beyond their being – the play itself is being – and there is nothing looming behind it.” (Röttgers, Identität, 93).

233 Cf. Ricœur, Identität, 67.

234 <http://rcus.org/confessions/>

235 Cf. Helmuth Plessner, Die Stufen des Organischen und der Mensch. Gesammelte Schriften IV, Frankfurt/M. 1981.

236 Ulrich, Exploration, 309.

237 Ritschl, Logik, 55.

238 Ulrich, Exploration, 314.

239 Cf. Frank Mathwig/Felix Frey, Sorgt für das Recht! (Isa. 1:17) Über das Verhältnis von Demokratie und Menschenrechten, hg. vom Schweizerischen Evangelischen Kirchenbund, Bern 2015.

240 Following Erica Haines “Everybody’s got a dad ...”. Issues for lesbian families in the management of donor insemination: Sociology of Health and Illness 22/2000, 477–499 (478): “it appears that lesbian DI [Donor insemination] transgressed too many boundaries: the ideological, because of its apparent flouting of the importance of fathers; the structural, because of its advocacy of either one-parent or two-mother households, and the biogenetic, because of its avoidance of sexual intercourse.”

241 Tobias Eichinger, Entgrenzte Fortpflanzung. On ethical challenges to medicine used to fulfill the wish for a child: Giovanni Maio/Tobias Eichinger/Claudia Bozzaro (eds.), Kinderwunsch und Reproduktionsmedizin. Ethische Herausforderungen der technisierten Fortpflanzung, Freiburg/Br., München 2013, 65–95 (66).

242 Basic bioethical questions about reproductive medicine of course also arise here, but they are not suitable as a criterion to distinguish between parents of the same sex and of different sexes.

243 Onora O’Neill, Autonomy and Trust in Bioethics. The Gifford Lectures. University of Edinburgh, 2001, Cambridge 2003, 66.

244 Katharina Baier, Reproduktive Autonomie als biopolitische Strategie – Eine Kritik des liberalen fortpflanzungsmedizinischen Diskurses aus biopolitischer Perspektive: Dominik Finckelde/Julia Inthorn/Michael Reder (eds.), Normiertes Leben. Biopolitik und die Funktionalisierung ethischer Diskurse, Frankfurt/M. 2013, 69–92 (90).

245 Cf. the recently discussed concepts of relational autonomy: Autonomie und Beziehung. Bericht zur Tagung vom 7. Juli 2016 des Veranstaltungszyklus «Autonomie in der Medizin». Swiss Academies Communications, Vol. 11, No 12, 2016; Monika Bobbert, Keine Autonomie ohne Kompetenz und Fürsorge. Plädoyer für die Reflexion innerer und äusserer Voraussetzungen: Frank Mathwig/Torsten Meires/Rouven Porz/Markus Zimmermann (eds.), Macht der Fürsorge? Moral und Macht im Kontext von Medizin und Pflege, Zürich 2015, 69–91; Christof Breitsamer (eds.), Autonomie und Stellvertretung in der Medizin. Entscheidungsfindung bei nichteinwilligungsfähigen Patienten, Stuttgart 2011; Theda Rehbock, Autonomie – Fürsorge – Paternalismus. Zur Kritik (medizin-)ethischer Grundbegriffe: Ethik Med 14/2002, 131–150; Wiesemann/Simon (eds.), Patientenautonomie.

246 Hilpert, Recht, 425.

247 *Ibid.*

248 Peter Sloterdijk, Zur Welt kommen – Zur Sprache kommen. Frankfurter Vorlesungen, Frankfurt/M. 1988, 39.

249 Michael J. Sandel, Beherrschung und Gabe. Plädoyer gegen die Perfektion: Die Politische Meinung 467, Oktober 2008, 26–32 (26); cf. *ibid.*, The Case Against Perfection. Ethics in the Age of Genetic Engineering, Cambridge 2007.