

**DRAFT: DO NOT CITE WITHOUT AUTHOR'S PERMISSION**

## **War Babies and Human Rights: Philosophical Reflections**

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Human beings possess an awe-inspiring capacity to devise seemingly ever more terrible forms of misery for our fellows. “War babies” – children born of wartime rape or sexual exploitation – vividly demonstrate this capacity. Their plight seems to heap woe upon injustice; these blameless creatures cannot but remind their mothers of the terrible crimes through which they were conceived and their communities of the horrific conflicts in which those crimes occurred. Tragically, though perhaps unsurprisingly, they are routinely neglected, rejected, or simply ignored; human beings possess a prodigious capacity for cruelty toward unfortunates as well.

When I agreed to write a conclusion for this important volume I envisioned something much like the essay that follows: a series of interconnected ruminations on the puzzles that arise concerning identity and human rights of war babies and on their normative and political implications. I failed to imagine or anticipate the profound sadness that would envelop me as I read and reflected on the chapters: academics are supposed to remain neutral and objective as they pursue their research. Yet the urgency of the questions posed in this volume cannot be grasped without a deep appreciation of the tragedy underlying them. Fortunately, human beings also possess tremendous capacities to empathize and to effect social change; one role of socially engaged research is to marshal empirical evidence in providing analytic and normative guidance that can inform such change. The chapters in this volume should be read in this spirit.

My main purpose here is to think through some puzzles raised in the chapters or in the interstices among them. For the most part, rather than engage directly with the individual chapters I shall step back from them to consider broad questions concerning war babies’ identity and human rights and the normative and political challenges they present. Before tackling those questions, however, I will make two comments that apply to the chapters collectively. The first concerns (implicit and explicit) calls for additional empirical work on war babies, calls I strongly endorse. I should only like to add that certain comparative studies might do much to illuminate the scope and nature of the problems faced by war babies. It would be extremely useful to compare the (lack of) enjoyment of the rights spelled out in the Convention on the Rights of the Child (CRC) of war babies and the desperately poor in the same cultures; of war babies and “illegitimate” children in the same cultures, and, of war babies and children of mixed race, ethnicity, and religion in the same cultures. Such studies might reveal quite a lot about just what is driving what when we try to understand the difficult social, legal, and policy challenges posed by war babies.

This leads directly to my second comment regarding the extreme sensitivity of conducting research on war babies, a challenge all of the authors face in one way or

another. I echo the sentiments expressed by Mertus and Baxter regarding the ethical imperative of utilizing participatory research design in hard cases. At least two worries that arise in connection with such methods deserve brief consideration, however. The first concerns the serious risks that research on vulnerable populations like war babies poses to the children involved. Mertus and Baxter perceive some of these risks, noting that

while researchers may be motivated by a desire to help an exploited and extremely marginalized population, their work may result in the labeling of the population and foster their further exploitation. In other words, by studying the children researchers undermine their protection by drawing attention to them. Yet at the same time, the abandonment of research projects on children born of wartime rape will almost certainly ensure their further marginalization (3).

This danger of drawing attention to these children and thereby abetting their victimization is quite serious, and the point that the difficulties involved cannot justify abandoning such important research is well taken. I shall address these difficulties further in a moment; first, I want to highlight another risk not directly addressed in the volume: traumatizing the children and their mothers.<sup>1</sup> While it is no doubt problematic to allow adults to speak for children in cases involving war babies, it is inadequate to conceive the ethical implications of such research primarily in terms of consent, privacy, and potential exploitation (Mertus and Baxter, 10). Exposing children and their mothers to the psychological and emotional trauma of reliving the experiences that precipitated their present marginalization and exploitation also raises serious ethical dilemmas. I am not suggesting that Mertus and Baxter are unaware of or insensitive to these dangers; I am rather suggesting that addressing these risks requires reaching beyond the participatory framework, which is not explicitly concerned with them. How to preserve the benefits of the participatory model while also establishing adequate safeguards for the victims requires further consideration.

Returning to the difficult choice between conducting research that might highlight the plight of war babies but expose them to further risk or ignoring such questions and contributing to war babies' further marginalization: Mertus and Baxter's conclusion that participatory research will "better safeguard the dignity of all involved" (3) seems too quick. Participatory research, at least as Freire imagined it in *Pedagogy of the Oppressed*, presumes a model in which clear "objective" distinctions exist between members of the oppressing and oppressed groups (he conceives oppression in class terms). Two aspects of this conceptualization seem inapposite to the case of war babies. First, the consciousness-raising aspects of participatory methodology seem explicitly designed to make members of the oppressed group aware of the oppressor, to help them liberate themselves from the internalization of oppression that characterizes the downtrodden as a group or class.<sup>2</sup> In the case of research on war babies, *the community in which research is conducted often comprises the oppressors* (though the oppression originates, as it were, in the violence perpetrated by outsiders, namely, the rapist/fathers). Put differently, unlike the cases Freire has in mind, ending the oppression of war babies

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<sup>1</sup> This issue is raised by Rimmer (9) and DeLaet (9-10).

<sup>2</sup> See, e.g., Paolo Freire, *Pedagogy of the Oppressed*, trans. Myra Bergman Ramos, Rev. ed. (New York: Continuum, 1993; reprint, 1993), 27ff.

requires a revaluation of the community's values, not the unmasking of an external ideology or the realization of an objective class situation (cf. Mertus and Baxter, 10-11). In such cases there is at least the real possibility that participatory research designs, instead of leading to liberation, could reinforce a community's rationale for rejecting war babies and their mothers.<sup>3</sup>

A second and closely related challenge for participatory research in coming to grips with the social plight of war babies concerns the complexity of the power hierarchies involved. Mertus and Baxter are cognizant of these challenges (8-10), but the avowedly interventionist nature of participatory research, combined with this complexity, raises extraordinary ethical quandaries that deserve further attention. Where the lines between oppressors and oppressed are clear and relatively stable, it is easy enough for the researcher to situate herself with the oppressed in such a way that the humanitarian values informing her work align with the liberationist objectives of the participatory paradigm. Moreover, there is no obvious or necessary conflict in such cases between the researcher's values and agenda and those of the community. In cases involving war babies, where oppression of mothers and children stems from oppression of the wider group to which the mothers belong, this felicitous alignment of values and interests breaks down. There is a clear tension between allowing the community to shape and direct the research and conducting research that gives voice to the oppressed children and mothers, a tension amplified in the case of mothers who internalize the community's attitudes and become oppressors of their own children. The problem is not just that the researcher must be extra-cautious in such cases but rather that the easy harmony between her principled commitment to a certain research paradigm and her personal and humanitarian value commitments might well break down. In such cases intervention risks slipping into advocacy, with implications not just for the researcher but also for the purported advantages and credibility of participatory research. One might imagine treating the children themselves as the relevant community, though doing so would risk highlighting the children as a group apart from (and potentially seen in opposition to) the broader maternal community. There are no easy answers here; again, in raising this concern my intention is not to criticize Mertus and Baxter but instead to point to an area of predictable tension where further normative and methodological reflection are warranted.

### **War Babies and the Politics of Identity**

Let me turn now to the primary task of this chapter, addressing the related questions of war babies' identity and human rights, and their normative and political implications. Among the rights of the child recognized by the CRC are the rights to a name and a nationality and to know and be cared for, so far as is possible, by her parents (Article 7). Children also have the right to the preservation of their identities (Article 8), a right originating in the Argentine experience of "enforced or involuntary" disappearances of

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<sup>3</sup> Mertus and Baxter seem aware of this possibility, though they don't dwell on it: in the case of war babies, they write, "the ethical researcher seeks to find a way to speak about infanticide, abuse, or neglect (with mothers or grandmothers as perpetrators) without enabling or legitimating those outcomes and without reinforcing power hierarchies between traumatized women and their societies" (8).

children during the Dirty War.<sup>4</sup> While name, family, and nationality are obviously important dimensions of identity, these important rights must not be confused with the right to a specific identity in the sense of integration into a particular social, cultural, or religious group. That is, there is no right recognized in international law to have the identity (again, in the broad sense) one might want to have. This distinction might appear trivial, but insisting on it clarifies what is at stake in the politics of identity in which war babies become embroiled.

It does so by differentiating the minimal sense of identity to which all children and indeed all human beings have a right from a fuller sense of identity as membership of and belonging in a community that shapes one's values, outlook, and opportunities and provides a cultural frame of reference and way of being in the world. We might, as a shorthand, call this "deep identity"; it is the type of identity frequently associated with communitarian thinking, multiculturalism, and the politics of recognition.<sup>5</sup> Deep identity is a characteristic of groups as well as of individuals; any group member's identity is in a sense negotiated within the framework of meaning that defines (and is defined by) the group. Group membership and identity are neither fully affective nor fully ascriptive; one cannot join just any community because one wants to, and one is never part of any community solely because one possesses (some of) its requisite traits or characteristics – values, language, religion, physiognomy, etc. Group identity is maintained in part through control over membership; groups define the criteria of membership and decide who qualifies as a member. Transmission of membership to children usually has a biological or genetic component: the child of two group members typically qualifies as a group member, though even this generalization might not hold in cases where the circumstances of the child's conception are held to be "illegitimate" on the dominant understanding of group identity or where holding certain values or beliefs is crucial to membership (as in a religious community). None of this is to suggest that membership is uncontested or uncontestable; questions of identity and its definition and negotiation are suffused with power. They are inherently political.

This distinction between a right to a civic identity – a right binding upon states and entailing non-discriminatory application of standards for citizenship<sup>6</sup> – and a right to what I am calling a deep identity seems frequently to get lost in the discussion of war babies' identities. Several contributors to this volume write about war babies' deep identity as if the children had a *right* to this identity and as if the genetic facts of their parentage *proved* their identity as members of their mothers' communities (I shall call this a claim of matrilineal membership). Such arguments are common in condemnations of patriarchal conceptions of identity that construct war babies as children of the enemy, children of hate – in short, as inheritors exclusively of their fathers' identities. For

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<sup>4</sup> Michael Freeman, *The Moral Status of Children: Essays on the Rights of the Child* (The Hague: Martinus Nijhoff Publishers/Kluwer International, 1997), 66.

<sup>5</sup> See, e.g., Michael J. Sandel, *Liberalism and the Limits of Justice*, 2 ed. (Cambridge: Cambridge University Press, 1998).; Will Kymlicka, *Multicultural Citizenship: A Liberal Theory of Minority Rights* (Oxford: Clarendon Press, 1995).; Charles Taylor, *Multiculturalism: Examining the Politics of Recognition*, ed. Amy Gutmann (Princeton: Princeton University Press, 1994).

<sup>6</sup> In practice states have wide latitude in determining who can qualify for citizenship, so that non-discriminatory application of the standards often turns out to be less important than the nature of the standards themselves; its actual terms are often prejudicial to immigrants and members of ethnic and religious minorities. What constitute legitimate standards for citizenship is beyond my scope here.

specificity, take the case of a child born of a Serb rapist and a Bosnian Muslim woman. The child straightforwardly has a right to a name and nationality. He does not, however, have a *right* to matrilineal membership.

This tension is apparent in Weitsman's generally excellent discussion of identity politics, where, against her background assertion that identity is socially constructed, she argues that biologically children "belong" to both parents' groups. Excepting the reductionist biological sense of belonging just criticized, such assertions do not convey any socially relevant. To claim that groups treating war babies as evidence or, worse, tools of genocide deny the genetic link between mothers and babies misses the point about social construction that Weitsman so effectively makes elsewhere: it is not the biological link, but rather the *socially-constructed significance of that link*, that matters for the politics of identity. No one disputes that war babies are (biologically) their mothers' children, but a child's genetic make-up is not an independent biological indicator of deep identity but rather one marker whose significance must be apprehended within the broader cultural context and politics of group membership. The real questions are sociological or anthropological (how the maternal community conceptualizes these children) and political (whether it should be encouraged or forced to accept them as members).

It might seem cruel or unreasonable to exclude war babies from matrilineal membership. Some sources note that matrilineal descent proved both useful and humane in the context of rapes attending the frequent pogroms suffered by European Jews; while in no way lessening the horror of these crimes, the norm of matrilineal descent at least made questions about the resulting children's identity less traumatic. This example reinforces that how the maternal community defines its own identity significantly influences the challenges war babies face; it also underlines that there is something exceptional in a maternal community's embrace of war babies. Whether acceptance of such children can be required or expected of a group remains unclear. Since identity is socially constructed, conceptions of identity and membership cannot be easily criticized from the outside – or rather, the ethical status of such criticisms is uncertain. Because control over membership and definitions of identity are crucial to group survival,<sup>7</sup> insisting on a strict biological "fifty-percent" rule for membership for a group that understands its identity differently is at least ethically problematic, especially if we take group identity and survival as *prima facie* goods to be preserved. There is a difference between recognizing that identity is socially constructed and inferring from that fact that certain notions of identity *ought* to be accepted by a particular group.

The underlying tension here is between groups' rights to define and control membership and an individual's claims on group membership. To the extent that we treat group survival as a valuable and desirable end – as discussions framed by considerations of genocide and "ethnic cleansing" encourage us to do – we must recognize that a right to a deep identity of an individual's own choosing, or an obligation on the part of groups to recognize as members individuals who meet certain externally set criteria) could have profoundly negative effects on the groups to which it might be applied. Forcibly altering a community's membership through the imposition of requirements to admit individuals who the group would otherwise exclude would be tantamount to taking away the group's

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<sup>7</sup> Michael Walzer, *Spheres of Justice: A Defense of Pluralism and Equality* (New York: Basic Books, 1983), 32ff.

self-determination. It could even plausibly be constructed as genocidal under Sections (b) and (c) of Article II of the Convention on the Prevention and Punishment of the Crime of Genocide (Genocide Convention), which prohibits “causing serious... mental harm to members of the group” and “deliberately inflicting on the group conditions of life calculated to bring about its physical destruction,” respectively. Counter-intuitively, from the group’s point of view a requirement to admit “nonmembers” could be both psychologically traumatic and reasonably construed as an infliction of conditions of life that would result in its (eventual) physical destruction.<sup>8</sup> Such a position seems to me both extreme and unwarranted, but it nonetheless highlights the very real tension we are considering here.

There is an interesting and important question concerning whether discrimination by groups against putative or would-be members constitutes a human rights violation, or for that matter should even be considered discrimination; I shall return to that question later on in a slightly more advantageous context. Here I want to emphasize that groups – unlike states – rarely have formalized membership requirements; belonging is primarily a social and psychological phenomenon. Whether, as a practical matter, it is possible to mandate acceptance of a member the group would otherwise not recognize seems doubtful. My point is not to prejudice the case in favor of group rights – about which I have certain reservations<sup>9</sup> – over individual rights but rather to emphasize that concern with designing policies to help war babies find a place within the shattered societies that produce them does not obviate concern with the implications of those policies on the victimized communities.

### **Are War Babies Victims? Of What? By Whom?**

Determining whether war babies are victims of human rights violations is more complicated than the obvious wrongs committed in their conception and the disadvantages they endure throughout their lives might suggest. The difficulties lie in determining what exactly war babies are victims of and who are their victimizers (see Rimmer, 9). In thinking about these issues, it is essential to be clear about the nature of harm. In what follows I shall be concerned with what I shall call *wrongful harming*. Wrongful harming has two components: “it must lead to some kind of adverse effect, or create the danger of such an effect, on its victim’s *interests*; and... it must be inflicted wrongfully in violation of the victim’s *rights*.”<sup>10</sup> One can be harmed without being wronged – by an accident, for example. Conceivably one can also be wronged without being harmed; Feinberg gives the example of a broken promise that, by some fluke, redounds to the advantage of the promisee.<sup>11</sup> Wrongful harming, then, can be defined as “adversely affecting another party’s interest in a way that wrongs him or, alternatively,

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<sup>8</sup> For a similar argument connecting the Convention on the Elimination of All Forms of Discrimination Against Women to genocide, see David M. Smolin, “Will International Human Rights Be Used as a Tool of Cultural Genocide? The Interaction of Human Rights Norms, Religion, Culture, and Gender,” *Journal of Law and Religion* 12, no. 1 (1995-96).

<sup>9</sup> For an excellent general discussion of group rights with which I am broadly sympathetic, see Peter Jones, “Human Rights, Group Rights, and People’s Rights,” *Human Rights Quarterly* 21, no. 1 (1999); cf. Peter Jones, *Rights* (Hampshire, UK: Macmillan, 1994)..

<sup>10</sup> Joel Feinberg, “Wrongful Life and the Counterfactual Element in Harming,” *Social Philosophy and Policy* 4, no. 1 (1986): 145-6.

<sup>11</sup> *Ibid.*: 146.

wronging him in a way that adversely affects his interest.”<sup>12</sup> I shall define “interest” here as comprising those rights guaranteed to all children in the CRC and in other international human rights instruments. In the following discussion, when I write that a child has been wronged or harmed I will mean that her interest has been adversely affected either as a result of the wrong action of another or in a way that wrongs her.

Various scholars have identified four possible ways in which war babies might be considered harmed in this sense: as victims of genocide, of war crimes, of infanticide, and of discrimination and stigmatization. In the first two instances the violator appears to be the rapist/father; in the third, usually the mother; in the fourth, the state and/or the child’s maternal community. In three of these cases, however, things are much more complicated than they initially appear. Only in infanticide are the wrong, the victim, and the perpetrator all obvious; in such cases the child’s status as a war baby precipitates, or at least rationalizes, the wrongful harm of murder. While these crimes might be comprehensible to us in light of the circumstances preceding them (McEvoy-Levy, 16), these circumstances do not obviate or excuse the crime (though they might reasonably serve as mitigating factors in deliberations about appropriate responses to that crime). These issues, while tragic, do not seem controversial to me, and I shall say nothing further about infanticide here, focusing instead on the other, more puzzling cases.

Let us consider first whether war babies might be victims of genocide. This possibility must be distinguished from the claim that systematic rape and forced impregnation constitute genocide against women, some of whom become mothers of war babies. This latter claim is obviously correct: systematic rape and forced impregnation (repeated rape carried out for the explicit purpose of initiating a pregnancy in the victim) qualify as genocide under Section (b) of Article II of the Genocide Convention, which prohibits “causing serious bodily or mental harm to members” of the target group. Some scholars and jurists have also argued that forced impregnation violates Sections (d) and (e) of the Convention, which prohibit measures intended to prevent birth within the group and the forcible transfer of children out of the group to another group, respectively;<sup>13</sup> these claims are more problematic.

Carpenter argues that whether war babies are victims of genocide depends upon how we understand their identity.<sup>14</sup> It seems, however, that on any interpretation of the child’s identity, she cannot be a victim of genocide, at least not in her status as a war baby. Consider first the patriarchal view of identity that seems to have informed the Serb campaign of forced impregnation of Bosnian Muslim women (see Daniel, 3-4): the child’s identity is the father’s; the mother is merely a vessel for the nurture of the fetus. (This same view seems to inform the rejection by war babies’ maternal communities, in Bosnia and elsewhere, as children of hate, children of the enemy, etc.) On this view the child might be a tool of genocide but cannot be its victim because by stipulation the child belongs to the father’s group; it cannot be a victim of genocidal acts either directly or indirectly (as a member of the target group). There is no transfer of the child out of the

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<sup>12</sup> Ibid.

<sup>13</sup> See R. Charli Carpenter, “Surfacing Children: Limitations of Genocidal Rape Discourse,” *Human Rights Quarterly* 22, no. 2 (2000). for a critical review of the literature.

<sup>14</sup> R. Charli Carpenter, “Forced Maternity, Children’s Rights and the Genocide Convention: A Theoretical Analysis,” *Journal of Genocide Research* 2, no. 2 (2000): 224-27.

target group because, again by stipulation, the child never was a member of that group.<sup>15</sup> Now suppose we take the opposite view, that the child's identity is its mother's (perhaps because it is typically born into the maternal community). The child's birth now represents an increase in the population of the maternal community; there is no transfer of the child out of the group. The child might plausibly be considered a victim of genocide qua member of the target group, but here it is crucial to note that *the child's status as a war baby has no bearing whatsoever on this determination*; it is no more a victim of genocide by virtue of its status than any other child or adult in the group. We can see this by considering the nature of the harm the child suffers: she is wronged in a way that harms her interests as an individual member of a target group; the wrongful acts in question consist in the genocidal acts committed against the group generally. Note that I am not claiming that rape and forced impregnation fail to qualify as genocide; as stated above, they clearly do. I am concerned here only with whether war babies are victims of genocide in any way that depends upon their peculiar circumstances of birth; I do not believe that they are.

Two types of confusion blur this point. One concerns identity; there is a temptation, as we have seen above, to consider the child as biologically "half" a member of its mother's group (and half a member of the rapist/father's group). As I argued above, it is doubtful that such biological definitions have much traction against cultural understandings of identity and uncertain how much traction they should have. Besides, I know of no international law that defines group identity and highly doubt whether biological "facts" could provide an uncontroversial basis for such a law. Second, arguments that interpret war babies as victims of genocide because they involve the forcible transfer of children are incoherent because they assume *simultaneously* that the children bear exclusively their father's and their mother's identities. The child can only be "transferred out" of the target group (the maternal community) if it is "in" that group, that is, if it carries its mother's identity. The purported "transfer" consists, however, in the birth of an "enemy" baby into the maternal community. But on this view, the child possesses the rapist/father's identity, nullifying the claim of membership in the target group that is a legal and logical requisite of any "transfer."<sup>16</sup> If we regard the child as a "half" member of each group, it appears to be either a "half" victim of genocide or simultaneously a victim and a victimizer – absurdities we would do well to avoid. Only on interpretations that construct the child's identity as its mother's is a war baby a victim of genocide, and only then in the same sense that any member of the target group is also a victim.

Another argument views war babies as victims of war crimes. War crimes are typically defined as violations of the laws of war as set forth in the Geneva and Hague Conventions and the UN Charter. The Fourth Geneva Convention defines "grave breaches" of those Conventions as

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<sup>15</sup> Cf. Carpenter, "Surfacing Children," 464, 74.

<sup>16</sup> On the patriarchal construction of identity one could argue (disingenuously, to be sure) that the birth of chetnik babies to be raised in the Bosnian Muslim community represents a forcible transfer of Serbian children out of their group and constitutes genocide against Serbs! This interpretation, while clearly specious, would be consistent with the maternal community's rejection of war babies as enemy children.



involving any of the following acts, if committed against persons or property protected by the present Convention: wilful [sic] killing, torture or inhuman treatment, including biological experiments, willfully [sic] causing great suffering or serious injury to body or health, unlawful deportation or transfer or unlawful confinement of a protected person, compelling a protected person to serve in the forces of a hostile Power, or wilfully [sic] depriving a protected person of the rights of fair and regular trial prescribed in the present Convention, taking of hostages and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly.<sup>17</sup>

This list is representative rather than exhaustive of war crimes, but it conveys a clear idea of what is imagined in international law.<sup>18</sup> Again, it is eminently clear that women who suffer from rape, sexual exploitation, and forced impregnation are victims of war crimes, as torture, inhuman treatment, infliction of great suffering, and serious injury to body and health all apply.

Complex issues arise in assessing whether war babies are victims of war crimes. It is helpful to begin by specifying in what the relevant harm consists. The most obvious candidate that would fall within the definition of war crimes seems to be the willful “causing great suffering or serious injury to body or health.” It is not completely clear, however, that such a crime exists in the case of war babies. Certainly they suffer a high rate of discrimination and stigmatization in their maternal communities, and sometimes in their states as well.<sup>19</sup> Importantly, however, in neither of these cases is the rapist/father the perpetrator of the direct wrong the child suffers. I shall return to questions regarding how we should conceive ill treatment of war babies by their maternal communities later on; here it suffices to note that, however we conceive that treatment, it is not likely to be as a war crime.

It is also unclear how far we can consider the rapist/father an indirect agent of wrongful harm to his war baby child(ren). The difficulty here lies in whether it makes sense to talk about wronging someone through bringing her into existence. In the case of war babies, the act that links the rapist/father to the wrongful harms suffered by the child in her state or maternal community is the very same act that brings the child into existence.<sup>20</sup> There is a great deal of philosophical debate about whether future persons have rights and whether it is possible to violate future persons’ rights.<sup>21</sup> Aware of this

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<sup>17</sup> GC4 Article 147; this is the most comprehensive statement, comprising definitions in the previous Conventions. For the full text see the web site of the International Committee of the Red Cross at <http://www.icrc.org/web/eng/siteeng0.nsf/iwpList133/1C2779AE80BF68CCC1256EA90043580C>

<sup>18</sup> Other war crimes concerning the *conduct* of battle (use of truce flags, etc.) are omitted here.

<sup>19</sup> The authors make this quite clear. This is an excellent example of why the types of comparison I called for at the outset would be helpful. Certainly war babies experience high rates of discrimination and stigmatization; are these rates higher than those of other “illegitimate” children, of children of mixed race/ethnicity/religion, or of extremely poor children? Only reliable data on such questions would let us conclude with reasonable certainty that their status as war babies explains the wrongs these children endure.

<sup>20</sup> See Elizabeth Harman, “Can We Harm and Benefit in Creating?,” *Philosophical Perspectives* 18 (2004).

<sup>21</sup> See, e.g., David Archard, “Wrongful Life,” *Philosophy and Public Affairs* 79, no. 3 (2004); Feinberg, “Wrongful Life...”; Derek Parfit, *Reasons and Persons* (Oxford: Oxford University Press, 1986); Mary Warren, “Do Potential People Have Moral Rights?,” in *Obligations to Future Generations*, ed. R.I. Sikora and Brian Barry (Philadelphia: Temple University Press, 1978).

difficulty, Carpenter has argued that we should conceive the wrongful harm done by rapist/fathers to their war baby progeny as “birth-by-forced-maternity.”<sup>22</sup> She presents this as an alternative to the conceptually muddled notions of “forced impregnation,” “forced maternity,” and “forced birthing” all of which conceptualize the wrong from the woman’s perspective rather than the child’s. Carpenter maintains that “birth of a child can never be a crime against the child, for this is the event that brings about her status as... a rights-bearer.”<sup>23</sup> I am not certain this is correct, but I shall postpone that question for a moment to consider a logical problem with birth-by-forced-maternity. As Carpenter defines it, this crime

encompasses both forced impregnation and enforced pregnancy together (but not forced impregnation that results in an abortion). It is through forced maternity, not forced impregnation directly, that the child comes into being as a rights-bearer and has claims to make on the community. Yet it is the aspect of force in relation to the *conception* that matters....”<sup>24</sup>

The flaw in this conceptualization becomes evident when we consider the parenthetical note regarding forced impregnation that results in abortion. On this construction, it is the combination of forced impregnation plus enforced pregnancy (no access to an abortion) and forced maternity that together constitute the crime of birth-by-forced-maternity. But imagine a case in which an abortion is available to a pregnant victim of forced impregnation who elects not to abort. The availability of an unutilized abortion eliminates the elements of enforced pregnancy and thus of forced maternity, meaning that the resulting birth cannot, by definition, constitute birth-by-forced-maternity. Not only does this conclusion seem counterintuitive, but, since abortion can in effect preempt or nullify this crime, abortion would seem to be morally obligatory, when available, on this view. Now imagine two babies born, on the same day, into the same community (their mothers are neighbors). Both women were raped and impregnated in the same camp; for reasons that need not concern us, one woman had the option of an abortion, which she declined, and the other was forced to bring her pregnancy to term. Both babies would be “children of the enemy,” conceived in rape, and both would presumably be victims of the same discrimination and stigmatization in their maternal community. Yet according to birth-by-forced-maternity one would be a victim of a war crime and the other not; moreover, the reason the potentially-aborted child would not be a victim has to do with the actions of her mother, not those of her rapist/father. This result seems to contradict Carpenter’s assertion that it is “the aspect of force in relation to the *conception*” of the child in which the crime originates.

I think Carpenter’s account moves us a good way toward a correct and revealing understanding of war babies as victims of wrongful harms (human rights violations) perpetrated by their rapist/fathers (though I have reservations about whether to regard these violations as war crimes, for reasons I explain below). Carpenter is right to focus on wrongs committed in the conception of these children. Yet the crime *against the prospective child* lies less in the force than in the *calculation* regarding the wrongs the

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<sup>22</sup> Carpenter, “Surfacing Children,” 464.

<sup>23</sup> Ibid.: 463.

<sup>24</sup> Ibid.

prospective child is likely to suffer. I would label as *wrongful procreation*<sup>25</sup> any intentional conception or impregnation *calculated to result in the birth of a child likely to suffer human rights violations*. Rape and forced impregnation by themselves are crimes against humanity, as recognized explicitly in the Rome Statute of the International Court;<sup>26</sup> presumably these are crimes against the woman. In themselves these actions do not wrong the child they bring into existence (though again, the philosophical issues here are quite complex). The wrong against the child consists in the intention of producing a child who will suffer shame, humiliation, rejection, and the other human rights violations attending them. (Perhaps something like this is what DeLaet has in mind in arguing that rapist/fathers deny access to human rights to their war baby progeny.)

Wrongful procreation has distinct advantages as a way of thinking about the harm done to war babies. Wrongful procreation allows us to understand the necessary complicity of the child's state or maternal community in committing the actual wrongs that directly harm the child while also recognizing the calculation regarding such complicity by the rapist/father as, itself, a wrongful act. On this view the wrong is dissociated from a woman's decision regarding abortion in cases where it is available but the absurdity of a wrong done to a non-person is avoided. Wrongful procreation can also withstand criticisms made of "wrongful life" arguments, to which it is in certain respects similar; while wrongful life cases frequently founder on the question of whether a child is "better off" with the harmed life she has, in comparison with non-existence, wrongful procreation locates the wrong not in a net assessment of welfare but in the calculated wrong committed by the rapist-father in actual violation of the child's human rights. In the parlance I have adopted here, the wrong lies in an impregnation calculated to result in a harmed life.<sup>27</sup> While such motives might seem hard to establish, in many cases – like that of camps designed around systematic rape that ceased once pregnancy occurred<sup>28</sup> – there seems to be little difficulty. I doubt that wrongful procreation should be considered a war crime because it might equally be committed in peacetime and because war has little to do with the wrong it condemns; classifying it as a war crime might diminish claims that an actionable harm has been done when the crime occurs in peacetime.<sup>29</sup> When committed as part of a systematic program of rape or "ethnic cleansing" within a

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<sup>25</sup> I borrow and adapt this term from Matthew Hanser, "Harming Future People," *Philosophy and Public Affairs* 19, no. 1 (1990)..

<sup>26</sup> *Rome Statute of the International Criminal Court* [web page] (Prevent Genocide International, [cited 15 July 2005]); available from <http://www.preventgenocide.org/law/icc/statute/part-a.htm#2>.

<sup>27</sup> This raises the question whether the crime would be nullified if the calculation were faulty, that is, if, despite the rapist/father's expectations, the war baby suffered no harms linked to her status. I think the answer here must be that in such cases there would be no crime *against the child* because there is no obvious harm involved that avoids Parfit's renowned non-identity problem; Parfit, *Reasons and Persons*.. Rape and forced impregnation, of course, still constitute crimes against the mother, but while we can imagine real harms to future persons as wrongs, the same is not necessarily true of potential but unrealized wrongs to actual people.

<sup>28</sup> See, e.g., Beverly Allen, *Rape Warfare: The Hidden Genocide in Bosnia-Herzegovina and Croatia* (Minneapolis, MN: University of Minnesota Press, 1996).

<sup>29</sup> Though the ubiquity of rape and other crimes of violence against women must, as many feminists have argued, cause us to rethink the conventional meanings of war and peace; see, e.g., Susan Brownmiller, *Against Our Will: Men, Women, and Rape* (New York: Bantam Books, 1979).; Catherine A. MacKinnon, "Crimes of War, Crimes of Peace," in *On Human Rights: The Oxford Amnesty Lectures 1993*, ed. Stephen Shute and Susan Hurley (New York: Basic Books, 1993)..

broader social conflict, wrongful procreation has greater affinity with the crimes against humanity described in the Rome Statute.<sup>30</sup>

The final type of human rights violation against war babies frequently mentioned by scholars is discrimination and stigmatization within the children's birth communities. Even in this apparently clear-cut case, however, puzzles arise. Part I, Article 2, Section 1 of the CRC clearly makes discrimination on the basis of birth or status illegal. On the widest reading, discrimination in the extension or protection of any of the rights outlined in the Convention would be included here, making any discrimination against or prejudicial treatment of war babies a clear human rights violation by the state. Among the most common forms of discriminatory or prejudicial state action include the denial of citizenship or nationality, of health, education, or other social benefits, or of the necessary social minimum to war babies. Typically, many maternal communities take similar actions and make similar omissions, denying recognition, social benefits, and social support to war babies and their mothers. Such social ostracism can at times have fatal consequences, as it is linked to women's and children's socio-economic prospects (a point to which I return in the final section); cases exist of economically-induced suicide and poverty-related morbidity related to such ostracism.<sup>31</sup> Yet whether stigmatization and discrimination in maternal communities constitutes a human rights violation, however, is unclear.

The CRC, like nearly all human rights law, is binding on *states*, and human rights violations have traditionally been understood as wrongs states commit against their citizens.<sup>32</sup> It is perfectly consistent, on this state-centered view, for a state to fulfill all of its obligations with respect to human rights and for women and their children to suffer harsh discrimination nonetheless. To see this, consider the denial of "identity" to war babies by their maternal communities. Let M be the maternal community of a war baby, WB, born in state S; M might define itself on racial, ethnic, religious, or "cultural" grounds. Assume that M's definition of membership requires that for a child to be a member of M, both of its parents must be members. By stipulation, WB cannot be M because her father is not M. M therefore denies her membership and discriminates against her by excluding her from religious and cultural rites and isolating her socially. But M resides in S, a state which grants full citizenship to WB and guarantees her the same social benefits as all other children – which happen to be practically none, as S is poor and ravaged by internal warfare. Now suppose further that in S, communities like M traditionally see to the social and economic needs of their members as best they can. Practically, WB is denied enjoyment of her human rights, yet on the traditionalist statist understanding of human rights it is not clear that human rights violations exist here: S fulfills its obligations under the CRC to the maximum extent it can. M is not similarly bound. M's actions and inactions clearly impact WB's human rights, yet M might insist that it provides – and is duty-bound only to provide – these benefits to Ms.

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<sup>30</sup> I cannot provide a full defense of wrongful procreation here, but I have attempted to do so elsewhere; see Michael Goodhart, "Sins of the Fathers: Wrongful Procreation in cases of Children Born of Wartime Rape and Sexual Exploitation," unpublished manuscript (available from author).

<sup>31</sup> I am grateful to Charli Carpenter for making this point clear to me and for helping me to grasp its implications for my argument in this and the following section. Without her insights and keen editorial intuition I would have inadvertently made an argument here that I did not intend to make.

<sup>32</sup> For a clear, concise conceptual discussion of this point, see Jack Donnelly, *Universal Human Rights in Theory and Practice*, 2 ed. (Ithaca, NY: Cornell University Press, 2003), 33-37.

It might seem that the simple solution would be to make groups and other nonstate actors responsible for the same human rights as states. Despite the obviously limits of the state-centric human rights framework, however, it is not obvious that this is the optimal solution. Lumping groups like M and other nonstate actors into the statist framework misses that the problem is not just one of whom to hold responsible for securing human rights but also of how rights themselves are conceived. Feminist critiques of human rights how that it is inadequate simply to “add women and stir,” and the same intuition applies to groups.<sup>33</sup> A thorough reconsideration what rights means and how they are constructed is necessary. Applying the statist framework to groups would be detrimental and, in some cases, simply incoherent. Part I, Article 2 of the CRC, for instance, forbids discrimination on the basis of religion; application of such a requirement to all social groups would effectively destroy religion. The right to a nationality, discussed above, makes no sense if applied to groups, and there are good reasons to resist the apparent analogy between citizenship and group membership that application of this principle to groups would imply. Part I, Article 19 describes the appropriate legal, social, educational, and administrative measures and the social welfare programs states should utilize in guaranteeing rights to citizens. Should all groups be subjected to similar requirements? The point is neither that groups should be permitted to discriminate as they please nor that groups should be exempt from all human rights requirements in all instances. The point is rather that precisely how these various requirements should apply to which groups in what specific circumstances cannot be answered without a good deal of careful consideration.

Another puzzle that arises in cases like WB’s concerns identity. Earlier I agreed with Weitsman concerning the social construction of identity and showed how such a view problematizes claims like WB’s putative biological claim to membership in M. When we move from those abstract considerations to more realistic cases like WB’s, where stigmatization and discrimination have dire and immediate impact on WB’s welfare, things look somewhat different. To see this, consider a similar case in which K is an ethnic and linguistic minority within state T. K has for years suffered human rights violations from T (and committed some of its own against Ts). In particular, K has been subjected to a political and military campaign to stamp out its language and culture. Suppose that K provides benefits to its Ks that T cannot or will not provide to Ks. Suppose further that there are Ts living within the territory where K predominates and that K does not provide these Ts with the same benefits it provides to Ks. We would be hesitant to call K’s action or inaction a violation of the human rights of the Ts, even if T is unwilling or unable to provide those Ts with comparable guarantees.<sup>34</sup>

The salient difference in our assessment of whether K is justified in withholding benefits to Ts and whether M is justified in withholding benefits to WB seems to be WB’s claim to special consideration in virtue of her biological connection to M. M’s actions seem morally objectionable in a way that K’s do not because of this special claim and the special moral obligation it seems to create for M, raising anew the question of

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<sup>33</sup> I have elaborated this argument in Michael Goodhart, “Human Rights and Nonstate Actors: Theoretical Puzzles,” in *Center Stage: Nonstate Actors in the Human Rights Universe*, ed. George J. Andreopoulos, Zehra F. Arat, and Peter B. Juviler (Bloomfield, CT: Kumarian Press, forthcoming).

<sup>34</sup> The case would be different if K were somehow preventing or interfering with provision of these benefits to Ts.

how much deference the human rights framework should grant to socially-constructed norms of identity and membership. There are no easy answers here: even if we think that groups deserve little latitude in denying benefits in such cases (a big if), we must recognize that coercing M to provide benefits to WB would likely have other negative effects on WB. Even if the tangible benefits can be mandated, the social and psychological benefits typically associated with membership would be unlikely to follow; indeed, resentment could well create new problems for WB and others like her. There is also the problem of encouraging states to make coercive interventions into the affairs of ethnic, religious, and cultural groups; the costs of such interventions must be weighed carefully against the anticipated benefits.

I cannot consider these complex issues further here; three provisional conclusions seem warranted, however, in light of this brief discussion. First, war babies unquestionably suffer human rights violations whose sources are overdetermined: their rapist/fathers, the broad social and economic conditions in states like S, and the attitudes of groups like M all contribute to their plight. Second, war babies' situation underscores the importance of *public* guarantees of all human rights, especially social and economic ones. Provision of such guarantees is especially important to the most vulnerable and marginalized members of society. Where states are incapable of providing such benefits, other generalized mechanisms of provision might be preferable to group-based provision. Obviously, state capacity-building should also be a high priority in such cases – a point to which I return below. Finally, whether or not groups like M are responsible for human rights violations in cases like that of WB, it seems clear they fall short of the high standards of human decency and compassion toward which human rights as a moral framework gesture. The only remedy for such deficiencies is a deeper social transformation and transvaluation of values – the creation of what McEvoy-Levy calls a human rights culture. I shall return to this subject in the final section.

### **Normative and Political Challenges**

It is sometimes argued that war babies suffer special or unique human rights violations or that the existing human rights framework is inadequate for addressing them (Carpenter 4ff; Daniel, 2; DeLaet, 12). I certainly agree, as the foregoing discussion makes clear, that adopting a war babies perspective brings into sharp relief serious flaws and limitations within the human rights framework. Sadly, however, in this respect war babies are hardly unique; consideration of the rights and needs of other vulnerable and marginalized classes of persons similarly expose the limits of and flaws in the existing human rights framework. Just as treating women's rights as human rights forced a complete reconceptualization of human rights, consideration of war babies (of homosexuals, of stateless persons...) requires us again to rethink what human rights mean and how they can be realized. I disagree, however, that these failures of the human rights *framework* represent a failure of the human rights *discourse*. It seems to me rather a strength that human rights are both appealing enough and pliable enough to be adapted to the needs of real people across an amazing diversity of situations, some of which we can barely imagine today.<sup>35</sup> The theoretical resources exist within the human rights

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<sup>35</sup> I would wager that many readers of this volume will read a volume on the human rights of clones in their lifetimes.

discourse to reinvent human rights indefinitely, and such reinvention should be embraced as a requirement of the universality to which human rights aspire.

With respect to violations, it seems incontrovertible that war babies *as a group* are particularly vulnerable; they face a higher incidence of violations due of their status than do typical children in their states and communities (though how much higher is uncertain owing to the lack of good data lamented by several of the authors here). Moreover, war babies are rendered further vulnerable because so many of them live in failed or war-torn states struggling to achieve peace or to make the transition to normalcy. This context means that war babies are also significantly impacted by the measures taken (or not taken) in efforts to rebuild such states and to create a human rights culture. Each of these issues – the heightened incidence of human rights violations experienced by war babies, failed states, and institution-building and reconciliation in conflict-ravaged societies – presents serious normative and political challenges for the human rights of war babies, challenges I shall elaborate upon in the remaining pages.

That war babies and their mothers face a higher incidence of human rights violations reminds us of two central claims advanced by various authors in this volume: the plights of war babies and their mothers cannot be separated (DeLaet, 1-2), and it is primarily socio-economic in nature. The inseparability of war babies' destinies and their mothers' stems from numerous factors, including: the children's economic dependence on their mothers throughout infancy and childhood and the mother's corresponding responsibilities; the children's status as living evidence of rapes committed against their mothers, crimes for which the women, although victims, are frequently vilified and rejected (DeLaet, 8; cf. Weitsman); and, the tragic fact that often mothers are perpetrators of wrongs against their war-baby offspring, whether through neglect, abuse, or, in extreme cases, reckless abandonment or infanticide.<sup>36</sup> As several of the authors emphasize in their contributions, the socio-economic challenges faced by war babies and their mothers are paramount. To see why, consider that one of the most damaging effects of the discrimination and stigmatization directed toward war babies and their mothers is their rejection by families and communities that would otherwise provide their primary social support networks. In failed, impoverished, and war-torn states, national social security systems are likely to be wanting; more traditional arrangements for social support are likely to be primary in such cases. Given the often limited economic opportunities for women working in the paid sector in many cultural contexts, discrimination and stigmatization can translate directly into poverty, which compounds the likelihood and severity of other violations women and war babies suffer. The situation is only worsened by the failure of most peace accords, in their provisions for institution building and political reconciliation, to attend to social and economic needs in general, and to the needs – indeed the existence – of war babies in particular (Rimmer, 7; DeLaet, 3; McEvoy-Levy, 9ff.).

These observations indicate two broad challenges that must be overcome if efforts to ameliorate the situation of war babies and their mothers are to succeed. The first

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<sup>36</sup> Women might responsibly give up their children to state agencies for care or ultimate adoption or entrust them to the care of willing relatives; unfortunately the term "abandonment" is sometimes used in describing such actions as well as actions like leaving children on the steps of hospitals and orphanages (or worse). The former set of actions seem qualitatively different from the latter, however, and I include the qualifier "reckless" in the text to indicate that I am referring the latter.

concerns pervasive structural issues of patriarchy and sex and gender inequality. That many women often depend for their (and their children's) well-being upon cultural institutions that construct and constrict their identities quite narrowly and in highly sexualized terms exacerbates the economic difficulties they face; such attitudes can exclude women from communal support and constrain their ability to support themselves outside of their communities. This observation underscores the need for long-term strategies to elevate the status of women.<sup>37</sup> The second, and closely related, challenge concerns the immediate need for policies that provide economic security for women and their children. Calls and strategies for economic empowerment recur throughout the chapters, cited both as one of the clearly voiced needs of "war mothers" and as one of the possible tools for mitigating human rights violations experienced by these women and their children (e.g., Apio, 8-9; Baldi, 8-9; DeLaet, 2). In the long run, economic empowerment is complementary, indeed integral, to improving the status of women generally: feminists since Mary Wollstonecraft and Elizabeth Cady Stanton have clearly recognized the links between economic independence, political freedom, and moral development for women.

More immediately, schemes for economic empowerment of women must be supplemented with social welfare schemes to support them and their children. Such programs should include adequate funding for state institutions caring for orphans or war babies turned over by their mothers, measures to facilitate adoption of such children, and a guaranteed source of income for war mothers and other victims of wartime rape and sexual exploitation.<sup>38</sup> Rimmer (13) suggests treating women and children as "veterans" eligible for pensions and other social benefits, while DeLaet (10) suggests reparations as a mechanism for providing social support while recognizing the structural nature of the crimes and wrongs involved. Both of these measures and others should be seriously considered. What might work in one context might not work in another, depending on the nature of the past conflict and a variety of social and cultural factors. It is less important what we call such schemes than that they be framed and implemented effectively, questions to which I shall return below in my discussion of changing the discourse surrounding war babies and their human rights.

The situation of war babies is doubly problematic in the context of failed states and war-torn states; not only are such states more likely to engender and sustain the kinds of conflicts in which systematic rape and forced impregnation occur, they are also less capable of coping with the social needs arising from such conflicts. The CRC, with its optimistic assumptions about states parties' ability to provide a range of human rights guarantees ranging from security to health care, education, and social welfare support, clearly neither envisions the incapacity of failed and war-torn states nor the impact such incapacity might have on children. In many ways these shortcomings merely reflect a wider problem with a state-centered human rights discourse, which makes it hard to conceive the role of nonstate actors in violating as well as in protecting and promoting

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<sup>37</sup> Unfortunately I cannot discuss such strategies here; for an introduction and overview, see the United Nations Development Program's Human Development Report 1995, *Gender and Human Development*, available online at <http://hdr.undp.org/reports/global/1995/en/>.

<sup>38</sup> I cannot join the debate addressed by some of the authors regarding the merits and drawbacks of international adoption except to note that, like so much else connected with war babies, much in that debate will turn on how the relevant actors construct the identity of these children.



human rights, as we saw in the case of groups' discriminatory practices, and which provides little guidance about how human rights might be protected where states are unable or unwilling to do the job. Failed and war-torn states are in this respect just the tip of a much larger iceberg: repressive and recalcitrant states also fall outside what human rights law and institutions presently envision. It is this failure that entities like the permanent International Criminal Court are beginning to address – though we seem a long way from any kind of international agency that could guarantee, even in the last instance, social and economic security where states cannot do so. What an effective global human rights regime might look like and how we might get there are questions beyond my scope here;<sup>39</sup> I raise them mainly to illustrate that the existing limits of human rights discourse with respect to war babies in failed and war-torn states are part of a wider problem comprising the state-centric nature of the human rights regime and its optimism regarding the functioning of those states.

This discussion of states' capacities leads logically to a consideration of states' *willingness* to undertake measures to alleviate the wrongs experienced by war babies and their mothers. Their performance with regard to the measures, described earlier, required to provide economic security is one indicator of such willingness. As noted earlier, most peace accords and transitional political arrangements avoid any mention of war babies, and most ignore the concerns of women and the society's economic, educational, and human welfare needs more generally. What McEvoy-Levy, in her insightful and persuasive chapter, aptly terms "patriarchal pragmatism" (11) suffuses peace accords and transitional justice more generally – though as DeLaet notes, sexual violence has been addressed through institutions designed to promote both punitive and restorative justice.<sup>40</sup> There is no doubt that McEvoy-Levy is right in arguing that an excessive focus on the rights and reintegration of armed combatants into society, a focus emphasizing themes like power-sharing, the composition of military and police forces, and pensions for decommissioned soldiers, comes at the expense of efforts needed to build a genuine human rights culture, including creation of adequate educational and social welfare schemes. The question is what might be done to change that fact.

Recognition of wrongful procreation as a crime against war babies might help in the achievement of such goals, in several ways. Like proposals for treating women and children as veterans, wrongful procreation would clearly establish children as direct (not just secondary) victims of wrongs committed by combatants in war and intrastate conflicts. It would also provide a basis for claims of maintenance and social support – in cases of interstate conflict, on the part of the state that orchestrated or condoned forced impregnation, and in cases of intrastate conflict, on the part of the state itself. Moreover, wrongful procreation has the advantage of identifying the specific wrong done to children, which might help to create a new discourse in which their victimization at the hands of the same forces that victimized their maternal communities could be recognized. Such a change could help not only in justifying economic support programs but could also provide a useful starting point for educational curricula designed to facilitate

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<sup>39</sup> I have tried to address these issues in Michael Goodhart, *Democracy as Human Rights: Freedom and Equality in the Age of Globalization* (New York: Routledge, 2005), ch. 8 and 9.

<sup>40</sup> Her discussion of the advantages and limitations of both approaches with respect to sexual violence and to war babies in particular is astute.

dialogue about war babies and for a wider societal debate about the wrongs faced by this vulnerable population.

The need to reorient the social discourse on war babies cannot be overstated. Such an effort is central to any effort at social reconstruction and reconciliation. It is sometimes asserted that there is a need to break the silence surrounding war babies; such statements must be heavily qualified. First, as McEvoy-Levy rightly notes (20-21), there are two different kinds of silence concerning war babies: strategic silences, which protect war babies and their mothers, and imposed silences, through which societies ignore or avoid the problem. I shall return to the former in just a moment; with respect to the latter, I am not sure that “silence” is the appropriate word. Recalling that actions sometimes speak louder than words, I submit that there exists in many of the societies examined in these pages a deafening roar of callous contempt toward war babies, one that constructs war babies and their mothers as objects of shame and humiliation and which facilitates their social exclusion and that is often promoted by the media and by state agencies, as Weitsman argues. This roar must be dulled, while at the same time a vocabulary and voice in which to express the legitimate claims of war babies must be developed. It is true that international agencies have not succeeded in shaping the debate on war babies as they have on other issues. Again, however, this hardly seems due to silence: a scan of the references in this volume reveals reports and studies bearing the names of the IRC, UNICEF, Amnesty, Physicians for Human Rights, and many other well-known human rights agencies and NGOs. The problem more resembles stupefaction at the nature and extent of the problem and its seeming intractability. Finding a way to generate a discourse around war babies that can help to overcome the neglect and indifference that frequently attend the issue in many states is a significant priority.

With respect to strategic silences, it remains clear that a tension exists between creating a broader, more balanced discussion of war babies and protecting the safety, dignity, and privacy of victims. In principle it should be possible to initiate and sustain a discourse about war babies that protects victims while also addressing their human rights constructively and effectively. One way to achieve this might be by building a discussion around the experience of other communities elsewhere that have grappled with war babies and the myriad issues they raise within and between communities as a way of partially defusing the issue. Another might be to provide forums for anonymous testimony that could help to vivify the problem within a community while protecting individual victims – a variation on victim/witness protection programs. Institutionally, the current emphasis on police, military, and political institutions in post-conflict reconstruction should be supplemented by the creation of permanent institutions, like human rights ombudsman’s offices and democratic forms for deliberation and discussion of basic rights and freedoms, that can address social wrongs in a sustained, political fashion.<sup>41</sup> Of course, as war babies grow up some will want to take more active advocacy roles in their communities, and such roles should be encouraged. Still, there can and must be an accommodation between strategic silence and a less one-sided debate about war babies.

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<sup>41</sup> I have in mind here something like the *Éspace d’interpollation démocratique* in Mali; see Susanna Wing, “Questioning the State: Constitutionalism and the Malian *Éspace D’Interpellation Démocratique*,” *Democratization* 9, no. 2 (2002).

The normative and political challenges raised by war babies remind us that human rights play a dual role in contemporary politics. On the one hand, they provide urgent protection – or at least hold out the promise of such protection – in the face of monstrous evils and quotidian suffering alike; on the other, they point toward a world in which everyone might enjoy a free and dignified life. As we struggle to comprehend how some men can regard their fellow human beings with such malice and disdain that they can contemplate and force pregnancy upon an unwilling woman through rape with the intention of creating a child calculated to be miserable and to bring misery upon its mother and her community, we must keep both of these roles in mind. We must maintain blind faith in the possibility of a better world, one in which war babies are rare and in which their human rights are secure. We must at the same time recognize that such violence, which manages to shock even the twenty-first century moral conscience, can be overcome only through careful study, deep reflection, and effective, tireless action. The contributors to this volume have added greatly to our understanding of this challenge; many have also offered concrete proposals for making things better. In critically engaging them here I hope not to have detracted from their achievement but rather to have added something valuable to it by clarifying some of the normative and conceptual issues at stake. Their work should be applauded for its acuity, its timeliness, and its significance

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