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Genetic preselection and the moral equality of individuals

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Suppose that it becomes possible to control the genetic traits of our descendants, and thus treat them as a product which can be engineered to our liking. Employing a Kantian vocabulary, Habermas says that this is a kind of intervention which should only be exercised over things, never over persons. In *The Future of Human Nature*,[1] Habermas develops a version of a common objection to genetic engineering – that it would involve treating humans as means rather than as ends. His formulation of this argument is important because he makes the novel claim that there is a somatic basis to our ethical freedom. We are embodied individuals and in order to regard ourselves as free and equal members of a community of similarly embodied individuals, we need to stand in a certain relationship to our own unchosen physical characteristics. The prospect of choosing the positive genetic characteristics of another person threatens to change the nature of that person's relation-to-self in a way that undermines his or her potential to become fully autonomous.

A number of philosophers working within the liberal tradition have argued that, for certain purposes, genetic selection and enhancement of embryos may be consistent with liberal principles. Liberal eugenics distances itself from the dark history of authoritarian, state-directed eugenics programmes, but asserts that parents' rightful freedoms entitle them to pursue some eugenic goals with respect to their children.

For instance, John Harris points out that we accept the conditioning of children by education, towards the development of intelligence, fitness and so on. Where the goals of education and genetic enhancement are the same, it is prima facie inconsistent to embrace one mode of causal determination while rejecting another.[2] John Robertson argues that a right to use genetic screening and enhancement technologies can be derived from the rights of procreative liberty that parents already enjoy.[3] Buchanan, Brock, Daniels and Wilder have

argued that genetic interventions to prevent disabilities are obligatory on grounds of justice and duties to prevent harm; and that genetic enhancements are permissible when they are pursued within certain constraints of liberal justice.[4] Nicholas Agar has argued for a 'liberal eugenics' which allows parents to select genetic 'goods' for their children, provided engineered enhancements respect a 'eugenic difference principle' of Rawlsian inspiration.[5] In a similar vein, Fritz Allhoff has argued that germ-line genetic enhancements are permissible where they serve to augment Rawlsian primary goods.[6] For all of these authors, the permissibility of genetically sorting and programming embryos is qualified in various ways. Nevertheless there is a good deal of support for the view that, in liberal societies, some kinds of embryo engineering should be allowed in the name of freedom, and perhaps even promoted in the name of equality.

Opponents of genetic engineering often appeal to religious doctrines, or derive an injunction against genetic tampering from a 'thick' and morally loaded account of human nature. Conservatives of various colours offer a range of moralized conceptions of the 'human' and its proper limits. For such critics, technologies that promise a 'post-human', 'transhuman' or 'super-human' future are all just roads to the inhuman, and thereby to perdition. A central principle of liberalism, however, is state neutrality with respect to the good. In a pluralistic liberal society, policies and prohibitions binding for all citizens cannot be premised on substantive moral views that only some of the citizens accept.

It is for this reason that Habermas's argument against genetic engineering is particularly interesting. His argument also depends on a certain moral image of human nature or, as he puts it, an 'ethical self-understanding of the species'.[7] However Habermas constructs his case within the normative framework and resources of *political* liberalism. Political liberalism accepts moral pluralism as a social fact and seeks to define the minimal moral consensus necessary for peaceful coexistence in a pluralistic society. Central to the idea of a liberal society is a commitment to the formal moral equality of citizens, standardly conceived in terms of a universalized legal and moral respect for individual autonomy. Habermas wants to show that allowing parents to design the genetic traits of their offspring, according to their subjective preferences, threatens to undermine the social preconditions of liberal equality.

A society of equals is one whose members possess equal rights and are bound by reciprocal duties. The members of the community place one another under moral obligations and expect each other to conform to norms of behaviour. For a moral agent, norms are not mere rule following. A well-trained dog may be reliably obedient and entirely predictable in response to the commands of its master, but it is not a moral agent. For rational moral agents, the normativity of shared social rules derives from their understanding and acceptance of those rules. They submit to norms voluntarily because they comprehend those norms as derived from shared reasons that the members of their community have to regulate their behaviour with regard to each other. Equality implies an essential symmetry in the relationship of moral agents, which requires that normative claims take the form of *universalized* reasons. The notion of 'human dignity' as inviolable is closely connected with this symmetry. To violate another person is to violate one of his or her basic rights, and the moral force of rights is ultimately derived from the mutual recognition that we possess shared reasons.

At this point Habermas introduces the body into the explanation of morality. It is in virtue of our rational nature that we are capable of being moral agents, but it is in virtue of our physical embodiment that we *need* to become moral agents. A community of disembodied intellects would have no use for morality. Habermas affirms a constructivist view of the origins and function of morality. Morality is a socially constructed solution to the very material problems presented by our mutual dependence and vulnerability. He puts it thus:

I conceive of moral behavior as a constructive response to the dependencies rooted in the incompleteness of our organic make-up and in the persistent frailty (most felt in the phases of childhood, illness and old age) of our bodily existence. Normative regulation of interpersonal relations may be seen as a porous shell protecting a vulnerable body, and the person incorporated in this body, from the contingencies they are exposed to.[8]

We need morality because we are dependent on each other and we can harm each other. Autonomy is not an abstract property of rational beings. To have autonomy is an achievement; a fragile, easily destroyed achievement, which is only preserved as long as individuals are mindful of their physical vulnerability and mutual dependence. We realize autonomy, as a meaningful freedom to be the authors of our lives, only through being equal members of a community of moral agents.

For Habermas the world of morality is a symbolic network constituted by the relations of mutual recognition of communicatively acting persons. Moral recognition is about the giving and receiving of reasons. The development of personhood substantially is the process of identifying oneself both as a person in general – that is, as a member of a community of persons – and simultaneously as a unique individual who is morally non-exchangeable. In order to assist the socialization process we anticipate it in the neonate, and extend to infants many of the rights and protections due to persons. Habermas contends that this attitude to infants – which inscribes them socially and legally as persons before they are in fact persons – shows that human life *as such* has moral value.

Habermas notes that the fetus and the neonate are already the subject of an 'anticipatory socialization'. Our moral responsibilities towards *children are*

structured by an anticipation of their future autonomy. A standard test of whether parental authority has been exercised well or badly is to consider how decisions would be justified to the later adult. The baby will one day be a grown person, who will ask her parents: 'why did you make me do X, or forbid me from Y' and they must give an explanation. Parental authority is like the authority of a trustee, who does not own what he holds in trust. The developing child already belongs to the moral world of reason giving in the sense that parents should behave *as if* they are answerable to the future adult, who will have a right to a reasonable justification of the way that parental power was exercised.

For Habermas, the permissibility of prenatal, therapeutic gene manipulation is determined by the reasonableness of assuming 'virtual' consent, when actual consent is not possible. Liberal eugenicists have challenged the distinction between genetic therapy and genetic enhancement, on the grounds that conceptions of disease are dependent on social norms and values. Habermas insists that we do need to draw a line between therapy and enhancement, as marking a boundary between acceptable and unacceptable genetic interventions. Genetic manipulations may only be classed as medical cures, rather than biotechnological enhancements, when we have broad social consensus that the condition to be 'corrected' is a disease. An 'assumed consensus can only be invoked for the goal of avoiding evils which are unquestionably extreme and likely to be rejected by all.'[9]

The very possibility of a shared consensus, achieved through public reason, presupposes that citizens recognize each other as reasonable beings. The condition that Habermas calls 'post-metaphysical thought' is the condition of culturally, religiously and socially diverse societies. In these liberal pluralistic societies the just is prior to the good. In both theistic and naturalistic ethical theories, the good is typically grounded in a metaphysical picture of the essential nature of humans and values. Because no single moral metaphysics commands the field, *public* reason is 'post-metaphysical' for reasons of pragmatic necessity. Since any account of the good life is unacceptable to those who subscribe to an alternative conception of the good, diverse societies are faced with the alternatives of mutual tolerance or intractable conflict. Thus in Rawls's account, for instance, the demands of justice are given by the principles of fairness that protect the separateness of persons. However Habermas insists that:

… this 'priority of the just over the good' must not blind us to the fact that the abstract morality of reason proper to subjects of human rights is itself sustained by a prior *ethical self-understanding of the species,* which is shared by all *moral persons.*[10]

Liberal tolerance itself does not make sense unless we conceive of human beings as animals capable of developing an autonomous morality. From the liberal perspective, the various beliefs about the good that we observe in

pluralistic societies deserve respect only in so far as we imagine that these alternative ways of life can be autonomously chosen. Liberal neutrality, then, does not mean that liberalism presupposes no ethical image of the human. Liberalism must picture humans as possessed of whatever characteristics are necessary for understanding ourselves as 'ethically free and morally equal beings guided by norms and reasons'.[11] In traditional moral debates between established schools of thought these assumptions can sit far enough in the background as to appear self-evident. Today, as previously unimagined possibilities for the manufacture of humans appear on the horizon of feasibility, the assumptions underwriting this 'ethical self-understanding of the species' are suddenly brought to the surface. Individual characteristics which have always been outside the scope of parental choice may become design options in a new order of technologically mediated procreation. What if some of these interventions impact negatively on a 'designed' person's ability to see him- or herself as an autonomous and morally equal being? A consistent liberalism cannot countenance genetic interventions that might impair the development of autonomy in the later person.

Habermas claims that one of the preconditions for being able to conceive of ourselves as both the authors of our own lives, and as equal members of the moral community, is that we enter the world as beings that are grown and not made. He develops this claim through a critique of liberal eugenics. Habermas quotes a passage from Nicholas Agar's essay 'Liberal Eugenics', in which Agar states that 'the distinguishing mark of the new liberal eugenics is state neutrality'.[12] Parents will select 'improvements' in their children according to their own values. Where authoritarian eugenics would restrict ordinary procreative freedoms liberal eugenics proposes radical extension of those freedoms.

Liberals can only admit eugenic modifications if the genetic modifications do not limit the autonomy of the future person or restrict his or her ability to interact with others as an equal. Thus liberal eugenicists emphasize the similarities between genetic enhancement and other interventions already allowed to parents. As Robertson puts it:

If special tutors and camps, training programs, even the administration of growth hormones to add a few inches in height are within parental rearing discretion, why should genetic interventions to enhance normal offspring traits be any less legitimate?[13]

Advocates of liberal eugenics emphasize the complex interactions of genes and environment in determining an individual's traits. If the causal influence of genes and environment are of the same order, we should regard genetic and environmental interventions as morally on a par also.

Liberal eugenicists who insist on the parity of genetic enhancement and education fail to acknowledge that this comparison 'cuts both ways', so to speak. Children who go to well-resourced, privately funded schools, instead

of poorer public schools, typically translate that luck into opportunity and wealth. In most Western societies parents de facto enjoy the right to allocate any proportion of their resources to their children's betterment. The exercise of that right produces social inequalities that are manifestly unjust. If eugenic technologies are allocated by the market, in a world not too economically distant from ours, then we should expect that such technologies will be used by the wealthy to further guarantee the class privileges of their children. From the perspective of distributive justice, the similar effectiveness of genetic and educational enhancements might count *against* parental freedom to pursue eugenic goals. However our concern here is not with the legitimacy of gene technology markets, but with the impact of genetic preselection on *autonomy*.

For Habermas the comparison of a prospective eugenic freedom with parental discretion in respect of education is a 'dubious parallel' which 'presupposes a leveling out of the difference between the grown and the made'.[14] His objection rests on a phenomenological distinction between 'being' and 'having' a body. In *The Future of Human Nature* this distinction is inadequately described, but for the purposes of this discussion we will take the essential point to be this: in order to be a moral agent who takes responsibility for my life and actions, I need a certain kind of subjective relationship or attitude towards my own body. It is my body that experiences, feels and acts. It is with reference to the body that we distinguish self from other; active from passive; what is done by me from what is done to me. In order to experience my thoughts and actions as my own, I need to identify with my body in the right way. To be autonomous I must be 'at home', so to speak, in my own skin. There are a number of conditions in which one's own body or mental states are experienced as alien and subject to external determination, and in such a state one's autonomy is severely compromised.

A crucial condition of autonomy is that I have a measure of agency over myself. I can take an objective and critical stance towards my own dispositions and behaviours, my personal history and to some extent my body. I can take myself as a project and attempt to change what I am. Causal explanations of phenotype refer to complex interactions between genes and environmental factors. Liberal eugenicists stress this point to argue for the moral equivalence of shaping persons by genetic or environmental design. Habermas, however, thinks that a person who has been genetically programmed might not be able to integrate the knowledge of that programming into a successful adult perspective on his or her life. Such a person cannot effectively accept or reject the values expressed in the selection of his genes, in the way that he might come to reject the values espoused in his education.

Some of Habermas's liberal critics have misunderstood the point that he is making here. They interpret Habermas as appealing to the apparent impossibility of rebelling against one's own genes in order to establish a clear moral difference between genetic and environmental enhancements. They

charge that Habermas's attempt to draw a sharp distinction between genetic and environmental interventions – the former being unrevisable and the latter revisable – reveals his simplistic and erroneous genetic determinism. David Wasserman presents this criticism as follows:

Why should Habermas believe that it is any more hopeless to be at odds with the 'genetically fixed' than the 'environmentally fixed' intentions of a third person? To the extent that parents shape the character and abilities of their already-born children, they do so largely at a time when those children are too young to contest their influence in any coherent or effectual way.[15]

Replying to Habermas's criticisms, Nicholas Agar quotes this passage with approval and, also in agreement with Wasserman, suggests that Habermas's objection hinges 'not on the irresistibility of genetic interventions, but instead on their unilateral nature'. Agar suggests that we might view genetic enhancement as less unilateral if we bear in mind how genes influence traits.

It is true that someone cannot, as an adolescent, change the fact that parents have engineered his genome – but he does have some control over the *influences* of the genes that he has received. Many genetic influences on complex traits such as intelligence take place after a person's birth, and they require a specific environment to have the effects that geneticists associate with them. The adolescent has a say in whether the influence of the inserted gene gets matched with the environment without which it cannot have its effect.[16]

This response misses the mark. The term 'unilateral' describes decisions or actions imposed on one party by another, without consent. 'Unilateral' does not mean that the subject of a unilateral action has no means of resistance. An attempt to control another person is not more unilateral if it succeeds and less unilateral if it fails. The wrong of acting unilaterally is the wrong of arrogating to oneself a power of decision that disregards the legitimate claims of others. Even in the ordinary course of child-rearing, parents can coercively shape their children in ways that are damaging for the development of autonomy. Habermas's objections to genetic enhancement cannot be refuted by pointing out that some environmental interventions may be equally irreversible from the perspective of the designed person. Nor can one reply by pointing out that genetic enhancements may fail to realize their intended effects in an uncooperative subject. Habermas draws our attention to the limits that respect for autonomy imposes on the *kind* of intentions we may have with regard to others. Genetic enhancement enables parental values and intentions to enter into a domain of the child's life history from which they have hitherto been absent, and where there can be no reasonable assumption of retrospective consent.

If we see ourselves as moral persons, we intuitively assume that since we are inexchangeable, we act and judge *in propria persona* – that it is our own voice speaking and no other. It is for this 'capacity of being oneself' that the 'intention of another

person' intruding upon our life history through the genetic program might primarily turn out to be disruptive.[17]

Habermas claims that in order to successfully regard ourselves as the authors of our own actions and aspirations, we need an origin that, as he puts it, 'eludes human disposal'. For each of us our birth is a natural point of origin that precedes our socialization. Babies are nature without culture, and thus the newborn is the definitive symbol of the possibility of new beginnings. My birth may have been the consequence of my parents' decision to have a child, but the particular body that I am was mostly outside their control – a permutation in nature's lottery.

For Habermas this undesigned, pre-social origin that we all share is a precondition of our moral equality. The domain of morality is the domain in which we may demand of others justification for actions that affect us. I respect the autonomy of another person when my actions towards that person are regulated by the general norms that he or she, as a rational agent, also accepts and is bound by. When conflict arises, respect for the humanity of others requires that we engage in reasonable discourse to find norms that can elicit consensus. As noted above, our treatment of neonates must satisfy a reasonable presumption of retrospective consent. When we are dealing with a baby who is not yet a person, this hypothetical consent can only be assumed if life-shaping decisions are guided by generally accepted norms. If I design a child to satisfy my own idiosyncratic preferences, then I cannot assume the retrospective consent of the later adult. The relationship between designer and genetically designed is permanently asymmetrical.

Our bodies have a vast number of characteristics with regard to which we are variously happy, unhappy or indifferent. For instance, I have a form of myopia that is, probably, genetically determined. It is correctable with glasses, but it can be annoying and I would prefer not to be myopic. The explanation of my myopia does not refer to any decisions made by other people. Nobody is responsible for the presence, in my genome, of genes that caused my eyeballs to grow too long. Because my myopia is not the result of the actions of another person it can raise no *moral* complaint.

By contrast I can make moral judgements about my education. As an adult I can take a critical and revisionist stance towards the values and beliefs that were espoused in my education, and I can attempt to undo some of the effects of that education on my dispositions and behaviour. With regard to the different aspects of my socialization the practical difficulties of refusal or revision vary greatly. From the perspective of autonomy, what matters is that the effects of my education are not inaccessible to me – I can get some purchase on these features of myself.

Imagine that a brain programming technology exists that allows educators to create permanent attitudes and beliefs. This technology can install indelible

first-, second- and even third-order desires into a person's psychology, permanently eliminate countervailing desires and install all of the beliefs necessary to make these desires seem rationally compelling. The subject of this treatment is incapable of ever revising these desires, *wanting* to revise them, or even entertaining the idea that he or she might have reason to revise them. Imagine a proposal for the beneficent use of this technology to inculcate in children desires to eat only nutritious food and lifelong disgust towards junk food and cigarettes. Whatever behavioural benefits might be achieved with such a technology, for liberals, its use would be an intolerable violation of autonomy. It would be no argument for such methods to point to the fact that we currently educate children about health and diet, and brain programming would more effectively achieve the very same objectives. Note that the problem here is not just that the subject of this treatment cannot revise the programmed attitudes. The problem is that desires installed in such a fashion can never be autonomously held. The programmed can never evaluate the normative decisions that determined their psychology and so their programmers have made them into something less than moral equals. In shaping future adults, the obligation to promote autonomy in children and adolescents impose limits not just on the goals, but also on the methods by which developmental goals may be realized.

A decision to select the genetic traits of another person is, like most decisions affecting others, an object of moral evaluation. To express one's personal values in the genome of one's child is unacceptable under the principle of respect for autonomy. The objection from autonomy does not rest on empirical assumptions about genetic determinism; nor on assumptions about the respective contributions of genes and environment in determining phenotype. The problem is with the *intent* of such a project. If I genetically design a future person in accordance with my desires, where subsequent consent cannot be assumed, then I have treated that person as a means and not as an end in him- or herself. I have manufactured the body of another person as if it were something I owned.

An argument commonly raised in support of pre-implantation genetic diagnosis and prenatal genetic enhancement is that no-one is harmed. The genetic intervention is intrinsic to the identity of the later person, such that the designed person cannot object to the designer's actions without implying that he or she should not exist at all. Is there any coherent sense in which one can feel violated by learning of a parental decision that was a precondition of one's existence? Nicholas Agar argues that 'there is some reason to think that enhancement technologies will forever elude Kantian morality's focus'.[18]

The principle of respect for autonomy tells us nothing about the claims of merely possible individuals, with respect to the actions which bring them into existence. Can Kantians, for instance, object to the intentional creation of non-rational humans, who could then be used instrumentally? The manipulation of

pre-personal human life seems to escape deontic constraints on the treatment of persons.

The right liberal response here is to point out that objections to eugenic enhancement do not have to be presented from the perspective of the subjects of such enhancement. It is not a matter of speaking for a silent 'victim'. Habermas's concern is about the conditions for the survival of liberal societies. Liberal societies must, by definition, be communities of moral equals. Inscribing our preferences into the genome of our descendants might undermine the preconditions for the moral equality of persons. Considerations of equality constrain how we may project our values into the future. If our children are to become our equals then they must be able to autonomously affirm, revise or reject the values we bequeath. In fact, the danger for liberalism arises precisely *because* the Kantian principle of respect for rationality has no application to choices between merely potential persons. Genetic programming decisions affect others and thus demand moral justification; yet these decisions are taken in a domain where rules of reciprocity between equals can find no traction.

Is prospective life opportunity a legitimate criterion for deciding the type of people who should exist? The liberal debate over genetic enhancement reveals a surprising tension between the formal constraints of moral equality and the goals of liberal justice. Liberal theories of distributive justice are standardly concerned with mitigating the undeserved effects of luck on opportunity. Yet Habermas is claiming that natural birth is a *precondition* of autonomy. Nature's lottery is certainly not just. The very paradigm of undeserved disadvantages, which liberal justice would ameliorate, are unhappy accidents of birth. For advocates of liberal eugenics, genetic diagnosis and engineering appears to offer the possibility of more effectively addressing important sources of injustice. Rather than merely compensating those who lose the birth lottery, we might better reduce unfairness by making birth less of a lottery. Agar, for instance, argues that genetic interventions are acceptable when they enhance the child's capacity to realize his or her *self-chosen* life plans, and when the allocation of genetic 'goods' satisfies Rawls's difference principle.[19]

It is true that one's own body can be experienced as inadequate and limiting. To enjoy meaningful opportunity our physical and mental powers must be adequate to our plans. In that sense an individual's life opportunities can be genetically enhanced. But autonomy is not merely a function of one's performance capacities. As Habermas reminds us, autonomy is a relational property. To be autonomous I must be able to see my intentions and actions *as mine*, in contradistinction to the intentions of others. Our moral sense of independence and responsibility for our actions depends on believing that we are the *authors* of our plans. If we write our values into the genome of our children, it is far from clear that the boundaries of authorship, and thus autonomy, can be preserved.

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