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4.6

Response to Commentaries

The Real Force of 'Procreative Beneficence'

Robert Sparrow

My primary topic article is critical of the contemporary philosophical enthusiasm for human enhancement and argues both that, were this technology to be realized in reality, its consequences are likely to be much more disturbing than this debate acknowledges, and—perhaps more importantly—that the politics of this debate are more problematic than many of those participating in it perhaps realize. Since writing it, and in the course of subsequent debate about these claims, I have become more and more convinced that when philosophers debate the ethics of genetic human enhancement—a prospect that remains largely imaginary—what the public hears is that 'genes matter' and by implication that those who are wealthy and successful must have better genes than those who are not. That is to say, the most likely consequence of the current debate about human enhancement is to reinvigorate Social Darwinism. I am pleased that three of my correspondents also share my concerns about the ethics of human enhancement and the manner in which the current philosophical debate is being conducted. Unsurprisingly, Professor Savulescu, who is arguably the single philosopher most responsible for the current vogue for writing about enhancement, disagrees. Inevitably then, most of this response will focus on the arguments Professor Savulescu has made in his criticisms of my chapter.

However, before I move to consider Professor Savulescu's objections let me first note a number of valid criticisms and useful additions from the other correspondents as well as a few places where I am inclined to dispute particular claims.

Professor Ichinokawa (2014) offers a valuable account of the history of eugenic sterilization in Japan, which dramatically illustrates the dangers associated with eugenic ideas and the power they have to motivate infringements of individual liberty even in the relatively recent past. His observation that many of the historical instances of sterilization that we today think of as being coercive were actually justified with reference to a lack of capacity in those being sterilized to consent to the decision and are therefore susceptible to being brought within a 'liberal' framework is particularly insightful. He also reminds us that a concern for the welfare of future individuals should motivate us first and foremost to be concerned with the *social* environment into which future citizens are born.

Dr McGowan (2014) agrees that the enhancement debate has the structure that I suggest but questions the extent to which my own argument suffers by virtue of having 'an entirely futuristic orientation' (in this chapter). She draws upon her own empirical research into the motivations and experiences of those undertaking PGD to suggest that some of the dangers I identify regarding the ways in which social expectations might shape decisions about genetic selection are already being realized in the context of PGD for selection against disease traits and for gender selection. She also notes that users themselves have complex and conflicted understandings of their own practices, which simultaneously emphasize reproductive liberty, acknowledge social and medical pressures to avoid known genetic and chromosomal risk factors, and disavow the pursuit of an ideal family. While I agree that such empirical investigations of user perspectives have a role to play in informing our understanding of the likely future of human enhancement, I remain confident that what we already know about the relationship between social context and individual decision-making is sufficient to suggest that, were meaningful genetic human enhancement to become available, individuals are less likely to remain 'free' to resist enhancement for their children than advocates of enhancement typically allow.

Professor Jones (2014) also insists on the primacy of 'dilemmas that medicine encounters in the clinics and in everyday practice' (in this chapter). I have much sympathy for this thought but would also defend the legitimacy of engaging in debates about more speculative possibilities, as I have done here, especially when the purpose of doing so is to reveal how these debates have real-world political consequences. Jones also calls attention to the likelihood of significant negative side effects of enhancement as well as a number of other arguments against enhancement I did not have space to discuss in my primary topic article. Two issues in this generally sympathetic discussion, in particular, deserve comment. First, Jones is obviously right that many of the issues about the obligations of parents and the dangers of social coercion already arise in the context of therapeutic interventions. Second, while the line between therapy and enhancement is indeed hard to draw, as his series of scenarios demonstrates nicely, I would nevertheless insist that we need to, as far as we can, affirm the moral significance of the therapy/enhancement distinction as being the only plausible place to draw a line that might help resist the social pressures towards enhancement I identified in my original paper (see also Sparrow 2010a; Sparrow 2010c; Sparrow 2011b). I am especially cynical about any definition of enhancement as anything that increases an individual's well-being even if such an increase leaves the individual's functioning below that which is species typical.

Let me turn now to Professor Savulescu's more critical discussion (Savulescu 2014). Much of his commentary rehashes arguments he has made elsewhere in defence of the putative obligation of procreative beneficence (Savulescu 2001a; Savulescu 2001b; Savulescu 2002; Savulescu 2005; Savulescu et al. 2006; Savulescu 2008; Savulescu and Kahane 2009) and to which I have previously responded (Sparrow 2007; Sparrow 2010d; Sparrow 2011a). Like him, I am happy to leave it up to the interested reader to refer to that larger literature (see also: de Melo-Martin 2004; Häyry 2004; Herissone-Kelly 2006; Parker 2007; Stoller 2008; Bennett 2009; Elster 2011) and decide for her- or himself where the burden of the argument lies. However, in this latest contribution by Savulescu, there are: a number of points of substantive disagreement that have not

been as evident elsewhere; several places where he has missed the point of my original criticism and thereby failed to respond to it; a couple of outright contradictions; and an extremely useful clarification of both the content and force of the 'obligation' of procreative beneficence and the idiosyncratic nature of the terminology Savulescu has used in the course of asserting it. Each of these is worthy of some further, brief, comment in this context.

Disagreements

To begin with the straightforward, substantive, disagreements.

Professor Savulescu notes, as does Professor Jones, that any danger of the new eugenics sliding into the old eugenics should arise just as much in relation to therapeutic uses of genetic technologies as in relation to enhancement. Savulescu sees no evidence that this has occurred and insists that 'a strong commitment to procreative liberty within Western liberal societies' will continue to prevent this from happening (Savulescu in this collection). Like Jones, I believe there is ample evidence that couples confronting reproductive decisions around disability are subject to a range of subtle and not-so-subtle social and institutional pressures to make particular sorts of decisions, sufficient to call into question the extent to which their decisions may be said to be truly 'free'. However, Savulescu is correct that, with rare exceptions such as the UK Human Fertilization and Embryology Act 2008, Western 'liberal' governments have as yet mostly shied away from directly legislating parental responsibilities in this regard. However, this may well be due to the relatively small number of parents who confront these decisions and the even smaller number who proceed to knowingly bring into existence children with severe impairments.¹² Should it become possible to achieve significant improvements in human welfare via genetic human enhancement, the pressure to coerce those individuals who wish to refuse such enhancements for their children may well, as I have argued, prove irresistible. In this context, Savulescu's insistence that testing for genetic dispositions is unlikely to generate such pressures either because it would sometimes not work or because it would often be unclear whether it had worked is surprising given the large claims made for genetic human enhancement elsewhere in the literature (Harris 1992; Silver 1999; Stock 2003; Green 2007). Moreover, Savulescu himself goes on to endorse state regulation justified on the basis of concern for the welfare of children later in his own argument! Similarly, his suggestion that parental freedom should be limited where unrestricted choice would threaten diversity betrays a surprising willingness even in this supposedly staunch defender of reproductive freedom to sacrifice liberty for social benefits.

I am also inclined to continue to insist that the fact that many of the societies in which contemporary arguments for human enhancement are being heard and read are not 'Western liberal societies' is significant for our ultimate assessment of the plausibility of arguments within this debate. The example Savulescu chooses serves him ill here: the

¹² It is also worth observing that the supposed commitment to 'procreative liberty' has not been sufficient to secure women a right to abortion on demand as yet in many jurisdictions in 'Western liberal societies'.

abuses of egalitarian arguments by authoritarian regimes should indeed give us cause to think carefully about how or whether we should advance them. Think here, too, of the role played by concerns that 'rogue states'—and not just peace-loving nations like the United States (!)—will develop nuclear weapons in discussions concerning technologies related to nuclear proliferation. One need not agree with the detail of these arguments or endorse their conclusions to acknowledge that the actual nature of the world in which technologies are being developed is relevant to discussions about the ethics of their development and application.

Missing the point

Savulescu completely misses the point of my argument that 'there cannot possibly be a gene' for criminality. The issue here is not whether the penetrance for genes associated with antisocial behaviour is high or low or whether the genes only code for certain behaviours in certain environments, as his discussion implies.¹³ Rather, my point was simply that 'criminal' is a social category, the limits of which are specific to historical and social context. In some jurisdictions if you smoke marijuana you are a criminal, in others you are an ordinary law-abiding citizen. There may well be genes that predispose individuals to enjoy getting high, but there cannot be a gene that predisposes them to being a criminal 'dope fiend'—as membership in the latter category is not a function of behaviour per se but rather of social context. Indeed, this point goes for behaviour more generally: same gene, same bodily actions, in a different context will be a different behaviour. Thus, if the child with the gene for MAO-L who is a victim of abuse grows up to join the police force or an irregular militia, where their predisposition to violence on a short fuse may even be a virtue, they may never be identified as involved in 'antisocial' behaviour. The point here is not that their antisocial behaviour is not singled out—it is that violence and intimidation in defence of law and order are not 'antisocial'. A gene for 'criminality' would have to somehow track these sociopolitical differences, which is impossible.

Savulescu also misses the point of my argument that his account implies that parents should all choose clones of the one 'best' embryo and that—at the very least—they should all choose embryos of the same sex.

Savulescu's protestations that many different genomes may be 'equally good' (of which, more below) notwithstanding, there seems to be no reason to rule out the possibility that one particular genome might be clearly superior to all others available—in which case all parents would indeed be obligated to choose clones of an embryo with this genome. In any case, the key point here is that any obligation on parents to maximize their child's welfare will radically constrain the range of morally permissible options available to them.

¹³ Although, in passing, in the context of Savulescu's reliance on claims about the implications of a genetic predisposition to poor impulse control for the future welfare of children, it is interesting to note the recent publication of a paper (Kidd, Palmeri, and Aslin 2013) suggesting alternative, non-genetic, mechanisms whereby what at least at first appears to be 'poor impulse control' in young children might correlate with poor socio-economic outcomes in later life.

Preimplantation (or preconception) sex selection for 'enhancement' is an important test case for arguments about 'procreative beneficence' because it is the one case where parents can wield significant influence over their child's life prospects through non-therapeutic selection on the basis of our existing (parlous) knowledge of human genetics. Whether procreative beneficence implies that parents have reason to select male or female children will depend on whether we believe they should take the impact of systemic social injustice into account in their deliberations about the implications of their reproductive decision for the welfare of their future child. There is therefore nothing inconsistent in my having pointed out that, strictly speaking, if parents wish to maximize the welfare of their child in racist, homophobic, and sexist societies they should choose to have 'good-looking, heterosexual, white men' and that, if they are obligated to neglect the implications of injustice for welfare in making this calculation, then they should all choose female children (because of their longer life expectancy). Whether injustice should figure into these calculations or not is a problem for advocates of enhancement. Again, what is important here is that whatever obligations parents have in relation to the sex of their children will bear on all couples. That is to say, parents should all make *the same* choice.

The fact that parents acting on their obligation to choose the 'best child' would be disastrous for diversity, as Savulescu rightly observes, is precisely why this is an interesting and problematic consequence of the argument for 'procreative beneficence'. A concern to preserve diversity is relevant at the level of law or public policy but does not alter the content of parental obligations, given that social homogenization would occur as the aggregate consequence of hundreds of thousands of uncoordinated reproductive choices and not as the result of any particular couple's decision. The fact remains, then, that each and every couple would be obligated to choose a child of whatever sort (and sex!) is judged to have superior life prospects. Moreover, to insist as Savulescu does here, that a concern for diversity would justify regulating to prevent these sorts of collective action problems is to argue that parents should be required to sacrifice the welfare of their children for the sake of social benefits. However, once this principle was admitted, what principled grounds do we have to object to more radical programmes for improving social welfare by engineering individuals to fit predetermined social roles? This disjunct between the implications of his account for the obligations of parents and the public policy implications of the threat to diversity remains to be addressed by Savulescu.

Finally, Savulescu has failed to appreciate the significance of my observation about the fascist iconography on the front covers of various key texts in the enhancement debates. Granted that the publication of these books will not in itself bring about a coercive eugenics, the fact that the editors and/or publishers of these books would choose such images independently of the desires of the authors is a vivid illustration of my argument that the politics of the debate about human enhancement transcends the intentions of those participating in it.

Contradictions

The nature (and force) of the obligation of procreative beneficence, given the non-person-affecting nature of the decisions to which it applies, is one of the most

contested questions in the debate surrounding human enhancement. Two contradictions in Savulescu's response to me suggest that even he remains confused about it. First, Savulescu insists that 'PB is not a special moral obligation' whilst simultaneously arguing, in his discussion of Parfit, that non-person-affecting reasons are 'of different moral significance and weight' to person-affecting reasons (Savulescu in this collection). This tension is reflected in his equivocation regarding the force of the obligation of procreative beneficence more generally. Second, and relatedly, Savulescu agrees that 'It would be legitimate for liberal democracies to place some constraints on selection decisions to prevent adverse collective effects and to limit parents to choosing genes which are plausibly related to increased chances of a good life, or at least not clearly associated with a decreased chance of a good life' but also argues that 'a legal obligation does not exist in the case of genetic selection' for 'a disabled or disadvantaged embryo [sic]'; elsewhere he suggests that coercion is only justified when harm 'is personal in nature' (Savulescu in this collection).¹⁴

Revealing clarifications

Despite these various disagreements with Professor Savulescu, I am extremely pleased that this exchange has prompted him to clarify several key points in the increasingly muddy debate around 'procreative beneficence'.

Perhaps Savulescu's most striking admission is that there is no such thing as 'the best child', at least as this phrase would ordinarily be understood. In many cases, he now acknowledges, there is no answer to the question as to which of various genomes is superior. Although he doesn't use the term, his discussion makes it clear that many different bundles of genetically influenced capacities are incommensurable when it comes to evaluating well-being. This admission is striking because: A) Savulescu's published work has repeatedly referred to an obligation to choose *the* best child, which invites the interpretation (the *single* best child) that he now claims is a misinterpretation; and, B) it risks effectively voiding the force of the obligation by allowing that any genome that would allow a child a life 'worth living' is as 'good' as any other, as scholars associated with the disability critique of prenatal testing have long argued.

In fairness, as Savulescu points out, the original formulation of the principle of procreative beneficence did allow for the possibility that there would be no single clear winner of the title of 'best embryo'—in which case parents would be obligated only to choose from amongst the set of embryos that were not worse than any others. However, I have always interpreted this as a concession to the problem that there might be no highest-ranked choice in rare cases of ties (such as when embryos are genetically identical), which besets any account of a maximizing principle, rather than—as it now turns out—a recognition that there will be no answer as to which embryo is best *in many cases*. Moreover, I believe my mistake was a reasonable one, shared by many others, given the emphasis on maximization in the key papers on procreative beneficence

¹⁴ Note that the collective effects of reproductive decisions are not person-affecting in so far as they will, harm, individuals who do not yet exist.

and the references to 'the best' in the text of these papers and occasionally in their titles (Savulescu 2001a; Savulescu and Kahane 2009). Indeed, even in this most recent treatment Savulescu's opening sentence affirms 'that couples have a moral obligation to use genetic selection to have *the best child*, of the possible children they could have' (Savulescu in this collection; italics added). Given that he has now conceded that in many cases there will be no such thing as *the* best child, a less misleading statement of parents' obligations would be 'not to have any child worse than another child they could have had'.

However, the real significance of allowing that, in many cases, there is no answer to the question of which genome is 'best' is that it concedes the possibility that procreative beneficence may seldom, if ever, be relevant to parents' reproductive decisions. Theorists from the disability community have argued forcefully on the basis of their own experience that the lives of those with even quite severe genetic conditions can be just as good as the lives of individuals with putatively 'better' genes (Kaplan 1993; Asch 1999; Hurst 2009; Oliver 2009). Even if we wish to insist that it is always 'better' to be born without impairments, we might still hold that any 'normal' genome is as good as any other.¹⁵ This would be the case, for instance, if the presence of an allegedly 'superior' trait in an individual, which conveys advantages in relation to the pursuit of some range of projects, always comes at the cost of their capacity to succeed in other projects (Sparrow 2010b). Conceding the possibility of the incommensurability of the life prospects of embryos therefore calls into question the entire project of genetic human enhancement.

It is also extremely useful to have it openly acknowledged that procreative beneficence is compatible with regulation 'in the public interest', including regulation that requires parents to have children with significantly worse welfare than others that they could have had (as would be the case where parents are expected to have a male child with a five-year shorter life expectancy for the sake of 'diversity' or a 'less boring world'). This is precisely why I worry about the development of a more coercive regime of regulation of reproductive decisions as a result of contemporary philosophical enthusiasm for human enhancement. The more we emphasize the importance of the public interest in deliberations about reproductive technology, the more likely it is that states will intervene in more reproductive decisions.

Although, as I noted above, there remains significant lack of clarity therein, Savulescu's discussion of the force of the 'obligation' of procreative beneficence is also timely. It is now abundantly clear that procreative beneficence provides us with only 'some reason' to choose the better embryo and that this reason is easily defeated by a wide range of other considerations. A key question now is whether *any* countervailing reason, such as the parents' desire to have another sort of child, is sufficient to vitiate the obligation of procreative beneficence—in which case it is extremely unlikely ever to determine parents' all-things-considered obligations (Sparrow 2007)—or whether countervailing person-affecting reasons must reach some particular threshold before they can outweigh reasons arising out of procreative beneficence—in which case we are owed a further

¹⁵ Interestingly, this is what people appear to think when the question of whether it is better to be born male or female is posed.

account of what this threshold might be and why procreative beneficence should have this force precisely.

Finally, I am grateful for Savulescu's acknowledgement that his use of the language of obligation in the debate surrounding procreative beneficence has, to date, been somewhat idiosyncratic. As Savulescu admits, 'a moral obligation' would ordinarily imply that those who fail to act upon it 'do the wrong thing' and consequently should be blamed and criticized for doing so. Moreover, *obligations* are usually thought to have an especial weight relative to the other reasons that might bear upon us (for instance, prudential reasons or mere preferences) such that to insist that we are obligated to do something is to say more than just that we have a reason to do it. Finally, while not all obligations should be enforced by law, the question of the appropriateness of regulation at least arises with regards to individuals' failure to meet their obligations, where it typically does not if they merely fail to act on the basis of their interests or desires. Savulescu's admirable sensitivity to the feelings of the parents of children with disabilities and his suggestion that the moral obligation to select might only operate prospectively, not retrospectively, do indeed go some way to mitigate the implications of these consequences for those who fail to meet their reproductive obligations.

While these clarifications should be of significant interest to those who have followed the debate about human genetic enhancement, unfortunately they do not directly address my larger argument that the real significance of this debate is the encouragement (and the veneer of respectability) it provides for advocates of cruder—and more politically troubling—eugenic arguments. Of course, if the original publication advocating 'procreative beneficence' had argued that there is no such thing as a 'best child' but that parents have 'some' reason to choose genes that would be likely to increase the welfare of their children—a point that seems to me to be trivially true—one wonders whether we would be having this exchange at all today.¹⁶

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¹⁶ I am extremely grateful to Professor Savulescu, Professor Ichinokawa, Dr McGowan, and Professor Jones, for their commentaries on my original paper, as well as to Professor Akira Akabayashi, Associate Professor Satoshi Kodama, Dr Hitoshi Arima, and Dr Keiichiro Yamamoto for their assistance with the production of this (and my other) contribution(s) to this volume.

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5.1

Primary Topic Article

The Misguided Quest for *the* Ethics of Enhancement

Thomas Murray

The title of this essay refers to the “misguided quest for the ethics of enhancement.” The problem is not with the quest, which is important, or with ethics, which are urgently needed in discussions of enhancement. No, the problem is with the definite article “the,” denoting a singular all-purpose ethics for every form of human enhancement. We will argue that the ethics of each particular enhancement is not determined by the technology or method used, or by whom it is employed. Rather, understanding the ethics of enhancement is deeply dependent on context. We will argue further that a fruitful way to describe what is important about a particular context is by elucidating the values that are sought in or served by that sphere of human endeavor, and by the meaning ascribed to that sphere by people who participate in it.

Unpacking “enhancement”

We can begin with a brief account of ambiguities in the concept of enhancement. The Oxford Online Dictionary offers this definition: “an increase or improvement in quality, value, or extent.” What possible objection could a reasonable person have to some intervention that increases quality or value? Take an example often given by commentators. Vaccinations have helped hundreds of millions of people escape the ravages of infectious diseases. Vaccines typically work by enhancing the responsiveness of an individual’s immune system to antigens presented by an infectious microbe. This is surely an enhancement to be celebrated and provided to all who can benefit from it.

Imagine a strategy that reasoned the following way. With ever more vaccines coming available, the trouble and expense entailed in vaccinating large populations becomes an increasing challenge. What if, rather than going disease by disease, we fashioned a vaccine that resulted in a general amplification of the immune system, increasing its ability to fight off all disease-causing organisms? Would that be an enhancement we should welcome?